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State and Local Taxation

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Part Five. Taxation of Particular Business Enterprises

XVI. Transportation and Communications

A. In General

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Commerce 74.20
West's Key Number Digest, Taxation 2244 to 2246, 2543, 2560, 2561

A.L.R. Library

A.L.R. Index, Income Tax
A.L.R. Index, Profits or Income
A.L.R. Index, Taxes
West's A.L.R. Digest, Commerce 74.20
West's A.L.R. Digest, Taxation 2244 to 2246, 2543, 2560, 2561

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State and Local Taxation
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Part Five. Taxation of Particular Business Enterprises

XVI. Transportation and Communications

A. In General

1. Taxation of Receipts, Earnings, or Income

§ 309. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Commerce 74.20
West's Key Number Digest, Taxation 2244, 2245, 2560

A.L.R. Library

State taxation of motor carriers as affected by commerce clause, 17 A.L.R.2d 421

The general principle that state taxes upon gross receipts from transactions in interstate commerce are invalid under the Commerce Clause of the Federal Constitution[1] is applicable to transportation and communication companies conducting interstate business, and various state taxes on the gross receipts, income, or earnings of such organizations are invalid.[2] However, state taxes on the receipts, earnings, or income of transportation or communication companies derived from business that is both interstate and intrastate are not invalid as to the portion representing intrastate business.[3] If the amount representing such business can be separated from the total receipts, the tax may be validly collected with respect to that amount.[4]

Observation:

It is permissible for a sales tax to be imposed on the full price of a ticket where that ticket is sold.[5]

Another limitation on the principle that a State may not tax receipts derived from interstate transportation or communication is that a tax measured by such receipts but imposed upon some other subject is not invalid under the Commerce Clause,[6] and various state taxes have been upheld on the ground that they represented impositions which, although measured by receipts, earnings, or income, were imposed upon the franchise of the taxpayer to do business[7] or upon its property within the state.[8]

A telecommunication company's charges to customers for access to its local telephone network to complete long-distance calls, and charges to customers for pay-per-use operator assistance services, were held to constitute charges for services performed in the state for purposes of determining whether such charges were subject to apportionment as gross receipts from business done in the state when assessing franchise taxes. Access to the long-distance calls and operator assistance services were requested by the company's customers located in the state who were then serviced by the company's network, facilities, and/or personnel also located in the state.[9]

Footnotes

1 § 166.

2 Railway Exp. Agency v. Com. of Va., 347 U.S. 359, 74 S. Ct. 558, 98 L. Ed. 757 (1954).

3 Pacific Telephone & Telegraph Co. v. Tax Commission of State of Washington, 297 U.S. 403, 56 S. Ct. 522, 80 L. Ed. 760, 105 A.L.R. 1 (1936); People of State of New York ex rel. Cornell Steamboat Co. v. Sohmer, 235 U.S. 549, 35 S. Ct. 162, 59 L. Ed. 355 (1915); U.S. Exp. Co. v. State of Minnesota, 223 U.S. 335, 32 S. Ct. 211, 56 L. Ed. 459 (1912).

4 Pacific Telephone & Telegraph Co. v. Tax Commission of State of Washington, 297 U.S. 403, 56 S. Ct. 522, 80 L. Ed. 760, 105 A.L.R. 1 (1936); People of State of New York ex rel. Cornell Steamboat Co. v. Sohmer, 235 U.S. 549, 35 S. Ct. 162, 59 L. Ed. 355 (1915).

5 Oklahoma Tax Com'n v. Jefferson Lines, Inc., 514 U.S. 175, 115 S. Ct. 1331, 131 L. Ed. 2d 261 (1995).

6 § 166.

7 Maine v. Grand Trunk Railway Co., 142 U.S. 217, 12 S. Ct. 121, 35 L. Ed. 994 (1891); Cumberland & P.R. Co. v. State, 92 Md. 668, 48 A. 503 (1901); Soo Line R. Co. v. Commissioner of Revenue, 377 N.W.2d 453 (Minn. 1985).

8 Illinois Cent. R. Co. v. State of Minn., 309 U.S. 157, 60 S. Ct. 419, 84 L. Ed. 670 (1940); Great Northern Ry. Co. v. State of Minnesota, 278 U.S. 503, 49 S. Ct. 191, 73 L. Ed. 477 (1929); Soo Line R. Co. v. Commissioner of Revenue, 277 N.W.2d 7 (Minn. 1979).

9 Southwestern Bell Telephone Co. v. Combs, 270 S.W.3d 249 (Tex. App. Amarillo 2008), review denied, (Oct. 1, 2010).

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Part Five. Taxation of Particular Business Enterprises

XVI. Transportation and Communications

A. In General

1. Taxation of Receipts, Earnings, or Income

§ 310. Extraterritoriality; confiscatory amount

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2244, 2245, 2560, 2561

The contention has occasionally been unsuccessfully raised that taxes which, while measured by the gross receipts or earnings of the taxpayer, are actually imposed upon the property of transportation and communication companies owning property or doing business in more than one state are invalid as an attempted extraterritorial exertion of the State's taxing power.[1] Furthermore, the contention that statutes imposing taxes on the gross receipts of transportation and communication companies according to a percentage of the taxpayer's gross receipts were invalid under the Due Process Clause of the Federal Constitution as confiscatory because of the high tax rate invoked has, under various particular factual situations, been rejected.[2]

Footnotes

1 Illinois Cent. R. Co. v. State of Minn., 309 U.S. 157, 60 S. Ct. 419, 84 L. Ed. 670 (1940); Pacific Telephone & Telegraph Co. v. Tax Commission of State of Washington, 297 U.S. 403, 56 S. Ct. 522, 80 L. Ed. 760, 105 A.L.R. 1 (1936).

2 Ohio Tax Cases, 232 U.S. 576, 34 S. Ct. 372, 58 L. Ed. 737 (1914); Great Northern Ry. Co. v. State of Minnesota, 216 U.S. 206, 30 S. Ct. 344, 54 L. Ed. 446 (1910).

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Part Five. Taxation of Particular Business Enterprises

XVI. Transportation and Communications

A. In General

1. Taxation of Receipts, Earnings, or Income

§ 311. What constitutes receipts or earnings; "lieu" taxes

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Commerce 74.20
West's Key Number Digest, Taxation 2246, 2560, 2561

A railroad's uncollected debts cannot be deducted from its gross earnings for purposes of computing the gross earnings tax.[1] In appraising a railroad's property for tax purposes, a non-system subsidiary's undistributed earnings should not be excluded in determining its influence on the system's stock and debt values.[2]

Taxes on transportation or communication companies measured by the amount of their gross receipts frequently are imposed in lieu of all other taxes upon the property of such concerns,[3] or in lieu of taxes on certain classes of their property, such as that necessary to the carrying on of the business for which they were organized.[4] A statute imposing a gross earnings tax upon property owned or operated by a railroad is an "in lieu" statute covering property either owned or operated and including nonowned property operated for railway purposes.[5] Within the meaning of a gross earnings tax statute taxing property either owned or operated by a railroad, the ownership of property includes the right to operate.[6]

Footnotes

1 Soo Line R. Co. v. Commissioner of Revenue, 277 N.W.2d 7 (Minn. 1979).

2 Matter of Southern Ry. Co., 313 N.C. 177, 328 S.E.2d 235 (1985).

3 § 309.

4 Hopkins v. Southern Cal. Tel. Co., 275 U.S. 393, 48 S. Ct. 180, 72 L. Ed. 329 (1928); Lake Tahoe Ry. & Transp. Co. v. Roberts, 168 Cal. 551, 143 P. 786 (1914).

5 CC Leasing Corp. v. Hennepin County, 297 Minn. 39, 209 N.W.2d 672 (1973).

6 CC Leasing Corp. v. Hennepin County, 297 Minn. 39, 209 N.W.2d 672 (1973).

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Part Five. Taxation of Particular Business Enterprises

XVI. Transportation and Communications

A. In General

2. Assessment and Valuation

§ 312. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Commerce 74.20
West's Key Number Digest, Taxation 2246, 2560, 2561

Statutes providing for the assessment of the property of transportation and communication companies by a state board, while other property is assessed by county or other local officials;[1] requiring taxes on transportation and communication companies to be assessed at the average rate of taxation upon other property subject to ad valorem taxation;[2] or permitting more hearings or appeals in connection with the assessment of the property of ordinary taxpayers than are allowed in connection with the assessment of the property of transportation or communication companies[3] have been sustained. While the view has been taken that systematic overvaluation by administrative tax officials of the property of transportation and communication companies as compared with the property of other taxpayers is not violative of the Equal Protection Clause of the Federal Constitution where the property of all such concerns is assessed at the same proportionate overvaluation,[4] it has, on the other hand, been held that making gross earnings the controlling factor in fixing the value for tax purposes of the property of transportation and communication companies operates, where the property of individuals and other corporations is assessed according to value without regard to income, is a violation of a constitutional provision specifically requiring that all taxes assessed upon corporate property be as nearly as possible by the same methods as are provided for the assessment of taxes on individual property.[5]

Practice Tip:

The purpose of a statute providing for central valuation for the wires, poles, and other property of telephone and telegraph companies is to address the problem of piecemeal assessment of a distribution infrastructure whose components are physically interconnected by a system of wires that cross municipal boundaries.[6]

The market approach, cost approach, and stock and debt approach are valid and helpful methods in assessing railroad-operating property.[7]

Although the earnings of a railroad are evidence of importance in determining its value for assessment purposes, the earning capacity of the railroad is of greater importance.[8] For assessment purposes, it is what the railroad property, efficiently managed, should have earned that throws light on its value, not the actual earnings.[9]

Footnotes

1 Michigan Cent. R. Co. v. Powers, 201 U.S. 245, 26 S. Ct. 459, 50 L. Ed. 744 (1906); Missouri, K. & T. Ry. Co. of Texas v. Shannon, 100 Tex. 379, 100 S.W. 138 (1907).

2 Michigan Cent. R. Co. v. Powers, 201 U.S. 245, 26 S. Ct. 459, 50 L. Ed. 744 (1906).

3 Michigan Cent. R. Co. v. Powers, 201 U.S. 245, 26 S. Ct. 459, 50 L. Ed. 744 (1906); Putnam v. Ford, 155 Va. 625, 155 S.E. 823, 71 A.L.R. 1217 (1930).

4 Nashville, C. & St. L. Ry. v. Browning, 310 U.S. 362, 60 S. Ct. 968, 84 L. Ed. 1254 (1940); Northern Pac. Ry. Co. v. State, 84 Wash. 510, 147 P. 45 (1915).

5 Johnson v. Wells Fargo & Co., 239 U.S. 234, 36 S. Ct. 62, 60 L. Ed. 243 (1915).

6 Bell Atlantic Mobile of Massachusetts Corp., Ltd. v. Commissioner of Revenue, 451 Mass. 280, 884 N.E.2d 978 (2008).

7 Missouri-Kansas-Texas R. Co. v. City of Dallas, 623 S.W.2d 296 (Tex. 1981).

8 In re Assessment of Omaha, Lincoln and Beatrice Ry. Co., 213 Neb. 71, 327 N.W.2d 108 (1982).

9 In re Assessment of Omaha, Lincoln and Beatrice Ry. Co., 213 Neb. 71, 327 N.W.2d 108 (1982).

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Part Five. Taxation of Particular Business Enterprises

XVI. Transportation and Communications

A. In General

2. Assessment and Valuation

§ 313. Unitary method

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Commerce 74.20
West's Key Number Digest, Taxation 2246, 2543, 2560, 2561

A "unitary appraisal" involves the appraisal of property that operates as a unit across county or state lines; in determining the value of property for tax purposes, the value of the property is first calculated as a unit and then apportioned by county or state.[1] For purposes of calculating a franchise tax, a unitary method calculates the local tax base by first defining the scope of the unitary business of which the taxed enterprise's activities in the taxing jurisdiction form one part and then apportioning the total income of that unitary business between the taxing jurisdiction and the rest of the world on the basis of a formula taking into account objective measures of the corporation's activities within and without the jurisdiction.[2]

There is nothing inherently opposed to either the Federal Constitution or the various state constitutions in statutes that require or permit administrative taxing officials to assess the property of transportation and communication companies owning or operating upon a continuous line of property, such as tracks or wires, extending into or through several states, or several counties or other taxing districts of a single state, as a homogeneous unit representing a single profit-earning business, as an alternative to assessing separately so much of the line as lies within the state or smaller taxing unit in question.[3] The validity of such enactment or of administrative action taken under it has been upheld as against the specific objections that the enactment or the action was violative of the inhibition against extraterritorial exertion of a State's taxing power,[4] constitutional provisions requiring equality and uniformity of taxation,[5] and the Commerce Clause of the Federal Constitution.[6]

Footnotes

1 T-Mobile USA, Inc. v. Utah State Tax Com'n, 2011 UT 28, 254 P.3d 752 (Utah 2011).

2 CSX Transp., Inc. v. Director, Div. of Taxation, 393 N.J. Super. 235, 923 A.2d 252 (App. Div. 2007).

3 Nashville, C. & St. L. Ry. v. Browning, 310 U.S. 362, 60 S. Ct. 968, 84 L. Ed. 1254 (1940); American Airlines, Inc. v. County of San Mateo, 12 Cal. 4th 1110, 51 Cal. Rptr. 2d 251, 912 P.2d 1198 (1996).

4 Illinois Cent. R. Co. v. Greene, 244 U.S. 555, 37 S. Ct. 697, 61 L. Ed. 1309 (1917); Fargo v. Hart, 193 U.S. 490, 24 S. Ct. 498, 48 L. Ed. 761 (1904); Director General of Railroads v. Hughes, 157 La. 8, 101 So. 728 (1924); Northern Pac. Ry. Co. v. State, 84 Wash. 510, 147 P. 45 (1915).

5 State v. Back, 72 Neb. 402, 100 N.W. 952 (1904); Missouri, K. & T. Ry. Co. of Texas v. Shannon, 100 Tex. 379, 100 S.W. 138 (1907).

6 Railway Exp. Agency v. Com. of Va., 347 U.S. 359, 74 S. Ct. 558, 98 L. Ed. 757 (1954); Wells Fargo & Co. v. State of Nevada, 248 U.S. 165, 39 S. Ct. 62, 63 L. Ed. 190 (1918).

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XVI. Transportation and Communications

A. In General

2. Assessment and Valuation

§ 314. Determination of unitary value

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2246, 2543, 2560, 2561

The principle that the systematic overvaluation of the property of a particular taxpayer as compared with the property of other taxpayers of the same class deprives it of its constitutional rights[1] is as applicable to the valuation of the entire system of a transportation or communication company as it is to the property of taxpayers generally.[2]

Reminder:

Despite the foregoing, the systematic overvaluation of the property of transportation and communication companies as compared with the property of individuals or other corporate taxpayers generally is not invalid if all transportation and communication companies are treated alike.[3] In valuing the capital stock, for purposes of a capital stock tax, it is generally recognized that the valuation of the property of an entire transportation or communication system may include the value of the concern's intangible property, such as its good will and, in the case of corporations, its corporate franchises.[4]

It is recognized, whether the applicable statute requires assessment of the tax according to the value of the taxpayer's capital stock or generally according to the "actual value" or "actual cash value" of its property, that the accepted method of ascertaining such value is by means of the "stock-and-bond" plan, the "capitalization-of-income" plan, or some combination of both of them.[5]

Special circumstances, such as the location of terminal facilities or other large real estate holdings of the taxpayer in a particular city so that a particular mile or two of its line has a value out of all proportion to any other similar distance along the line's entire length,[6] ownership by the taxpayer of stocks, bonds, or other investments whose value is not enhanced by the business operations of the concern and, conversely, which do not enhance the tangible property of the taxpayer located in the particular taxing state or smaller taxing unit in question,[7] or a general decline in values due to economic depression,[8] may require the modification in particular instances of the general methods of obtaining a proper valuation for tax purposes of the entire property of a transportation or communication system.[9]

Footnotes

1 As to the need for equality and uniformity in taxation, generally, see §§ 101 to 117.

2 Southern Ry. Co. v. Watts, 260 U.S. 519, 43 S. Ct. 192, 67 L. Ed. 375 (1923); Missouri, K. & T. Ry. Co. of Texas v. Shannon, 100 Tex. 379, 100 S.W. 138 (1907).

3 § 312.

4 Northern Pac. Ry. Co. v. State, 84 Wash. 510, 147 P. 45 (1915).

5 Great Northern Ry. Co. v. Weeks, 297 U.S. 135, 56 S. Ct. 426, 80 L. Ed. 532 (1936); Rowley v. Chicago & N.W. Ry. Co., 293 U.S. 102, 55 S. Ct. 55, 79 L. Ed. 222 (1934), opinion amended on other grounds, 293 U.S. 532, 55 S. Ct. 211 (1934); Missouri, K. & T. Ry. Co. of Texas v. Shannon, 100 Tex. 379, 100 S.W. 138 (1907).

6 Fargo v. Hart, 193 U.S. 490, 24 S. Ct. 498, 48 L. Ed. 761 (1904).

7 Fargo v. Hart, 193 U.S. 490, 24 S. Ct. 498, 48 L. Ed. 761 (1904).

8 Great Northern Ry. Co. v. Weeks, 297 U.S. 135, 56 S. Ct. 426, 80 L. Ed. 532 (1936).

9 Southern Ry. Co. v. Commonwealth of Kentucky, 274 U.S. 76, 47 S. Ct. 542, 71 L. Ed. 934 (1927).

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XVI. Transportation and Communications

A. In General

3. Apportionment

§ 315. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Commerce 74.20
West's Key Number Digest, Taxation 2246, 2543, 2560, 2561

A state tax on the gross income of utilities doing business in the state may not, consistently with the Commerce Clause, be imposed on the carrier's unapportioned gross receipts from continuous transportation between termini in the state over a route a material part of which passes through other states.[1] Thus, in a number of instances where taxes measured by receipts, earnings, or income have been upheld on the theory that they were actually imposed either upon the franchise of the taxpayer or on its property, it has appeared that the tax statutes involved provided for either apportionment of the tax according to the proportion of the total receipts of the taxpayer that the number of miles of its track or line within the taxing state bore to the total length of such track or line[2] or imposition of the tax upon all receipts derived from carriage or communication between points within the state and also upon that proportion of the receipts from carriage or communication between points within and without the state as the length of the line within the state bore to the whole length of the line.[3] The propriety of the mileage method of apportionment has been expressly affirmed as against the contention that it was violative of the Commerce Clause of the Federal Constitution[4] or the general prohibition of extraterritorial exertions of the State's taxing power.[5]

Footnotes

1 Central Greyhound Lines of N. Y. v. Mealey, 334 U.S. 653, 68 S. Ct. 1260, 92 L. Ed. 1633 (1948).

The rule which permits taxation of instrumentalities of interstate commerce by two or more states on an apportionment basis precludes taxation of all of the property of an interstate carrier by the state of its domicil. Braniff Airways v. Nebraska State Bd. of Equalization and Assessment, 347 U.S. 590, 74 S. Ct. 757, 98 L. Ed. 967 (1954).

2 Cumberland & P.R. Co. v. State, 92 Md. 668, 48 A. 503 (1901).

3 Central Greyhound Lines of N. Y. v. Mealey, 334 U.S. 653, 68 S. Ct. 1260, 92 L. Ed. 1633 (1948); Illinois Cent. R. Co. v. State of Minn., 309 U.S. 157, 60 S. Ct. 419, 84 L. Ed. 670 (1940); Great Northern Ry. Co. v. State of Minnesota, 278 U.S. 503, 49 S. Ct. 191, 73 L. Ed. 477 (1929).

4 Illinois Cent. R. Co. v. State of Minn., 309 U.S. 157, 60 S. Ct. 419, 84 L. Ed. 670 (1940); Wisconsin & M. Ry. Co. v. Powers, 191 U.S. 379, 24 S. Ct. 107, 48 L. Ed. 229 (1903); Cumberland & P.R. Co. v. State, 92 Md. 668, 48 A. 503 (1901).

5 Illinois Cent. R. Co. v. State of Minn., 309 U.S. 157, 60 S. Ct. 419, 84 L. Ed. 670 (1940); Great Northern Ry. Co. v. State of Minnesota, 278 U.S. 503, 49 S. Ct. 191, 73 L. Ed. 477 (1929).

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Part Five. Taxation of Particular Business Enterprises

XVI. Transportation and Communications

A. In General

3. Apportionment

§ 316. As between states

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Commerce 74.20
West's Key Number Digest, Taxation 2543, 2560, 2561

An apportionment formula for computing tax on a business that derives a portion of its income from operations in the state will be stricken if the taxpayer can prove by clear and cogent evidence that the income attributed to the state is in fact out of all appropriate proportion to the business transacted in that state or has led to a grossly distorted result.[1] In most instances, in the apportionment of taxes upon the property of transportation and communication companies as between the various states through which the line of the taxpayer runs, the adoption of a mileage basis of assessment, that is, attributing to the taxing state that proportion of the total valuation that represents the ratio between the number of miles of track or line within the state and the taxpayer's total track or line wherever located, is entirely proper and will be upheld,[2] but special circumstances may arise under which adoption of a mileage basis of apportionment will result in a violation of the constitutional rights of the particular taxpayer involved.[3]

The method of apportionment applied by administrative officials with respect to the assessment of taxes against a transportation or communication system by the unit rule will not be interfered with in the absence of a clear showing of a deprivation of the taxpayer's constitutional rights.[4]

Under a statute providing that in assessing the property of transportation companies for tax purposes, the administrative officers should "consider" the ratio between the length of the lines "operated, owned, leased, or controlled" by the taxpayer within the state and the total length of such lines everywhere, the tax officials, if they adopt the mileage basis of apportionment, must

include in their computation the length of lines operated by other transportation companies a majority of whose capital stock is owned by the taxpayer.[5]

Observation:

Taxation of a railroad track that exits a state and passes over an adjoining state's territory by geographical necessity before returning to the state must be apportioned between the two states unless the amount that passes out of the state is a mere trifle.[6]

Footnotes

1 CSX Transp., Inc. v. Director, Div. of Taxation, 393 N.J. Super. 235, 923 A.2d 252 (App. Div. 2007).

2 Nashville, C. & St. L. Ry. v. Browning, 310 U.S. 362, 60 S. Ct. 968, 84 L. Ed. 1254 (1940); Louisville & N.R. Co. v. Greene, 244 U.S. 522, 37 S. Ct. 683, 61 L. Ed. 1291 (1917); Commonwealth v. U.S. Express Co., 149 Ky. 755, 149 S.W. 1037 (1912); Director General of Railroads v. Hughes, 157 La. 8, 101 So. 728 (1924).

3 Southern Ry. Co. v. Commonwealth of Kentucky, 274 U.S. 76, 47 S. Ct. 542, 71 L. Ed. 934 (1927); Union Tank Line v. Wright, 249 U.S. 275, 39 S. Ct. 276, 63 L. Ed. 602 (1919).

4 Nashville, C. & St. L. Ry. v. Browning, 310 U.S. 362, 60 S. Ct. 968, 84 L. Ed. 1254 (1940); Great Northern Ry. Co. v. Weeks, 297 U.S. 135, 56 S. Ct. 426, 80 L. Ed. 532 (1936); Rowley v. Chicago & N.W. Ry. Co., 293 U.S. 102, 55 S. Ct. 55, 79 L. Ed. 222 (1934), opinion amended on other grounds, 293 U.S. 532, 55 S. Ct. 211 (1934).

5 Louisville & N.R. Co. v. Greene, 244 U.S. 522, 37 S. Ct. 683, 61 L. Ed. 1291 (1917).

6 Southern Pacific Transp. Co., Inc. v. State, Dept. of Revenue, 202 Ariz. 326, 44 P.3d 1006 (Ct. App. Div. 1 2002).

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XVI. Transportation and Communications

B. Railroads

Topic Summary | Correlation Table

Research References

West's Key Number Digest

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A.L.R. Library

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§ 317. "Roadbed," "roadway," etc

Topic Summary | Correlation Table | References

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"Roadbed" has been judicially defined as the bed or foundation upon which the superstructure of the railroad rests[1] while "roadway" has a more extended signification, including, besides the items associated with the roadbed, whatever space of ground a railroad is allowed by law in which to construct its roadbed and lay its track, including a right-of-way.[2]

The terms "roadbed" and "roadway" include such items as trolley lines of electrified railroads and snowsheds over tracks but not telegraph lines,[3] fences,[4] cattle yards,[5] or superstructures.[6] The term "railroad track" includes stockyards.[7] Under a particular state constitution, "railroad tracks" are considered public highways.[8] The term "railroad property" includes a bridge owned and used by a railroad company although the structure also has tracks for streetcars and a path for pedestrians.[9]

Footnotes

1 CSX Transp., Inc. v. Chicago and North Western Transp. Co., Inc., 62 F.3d 185 (7th Cir. 1995).
2 CSX Transp., Inc. v. Chicago and North Western Transp. Co., Inc., 62 F.3d 185 (7th Cir. 1995).
3 Northern Pac. Ry. Co. v. Brogan, 52 Mont. 461, 158 P. 820 (1916).
4 Chicago, B. & Q.R. Co. v. Box Butte County, 99 Neb. 208, 155 N.W. 881 (1915).
5 San Francisco & S.J.V. Ry. Co. v. City of Stockton, 149 Cal. 83, 84 P. 771 (1906).

6 Atchison, T. & S.F. Ry. Co. v. Los Angeles County, 158 Cal. 437, 111 P. 250 (1910).

7 People ex rel. Mooneyham v. Cairo, V. & C. Ry. Co., 247 Ill. 360, 93 N.E. 405 (1910).

8 Mississippi Export R. Co. v. Rouse, 926 So. 2d 218 (Miss. 2006).

9 Board of Equalization of Campbell County v. Louisville & N.R. Co., 139 Ky. 386, 33 Ky. L. Rptr. 78, 109 S.W. 303 (1908).

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Part Five. Taxation of Particular Business Enterprises

XVI. Transportation and Communications

B. Railroads

1. In General; Scope and Meaning of Particular Statutory Phrases

§ 318. "Right-of-way"

Topic Summary | Correlation Table | References

West's Key Number Digest

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In the railroad industry, the term "right-of-way" means the roadway, which is property liable to taxation.[1] Anyone contemplating the purchase of a railroad's right-of-way justifiably assumes, in the absence of a contrary statement in the deed, that the rails are being sold along with the right-of-way conveyed by the deed.[2]

The term "right-of-way," as it is used in statutes relating to the taxation of railroads, does not necessarily exclude buildings, structures, or other improvements upon the real property of the railroad[3] but includes bridges and approaches,[4] depots and stations, shops, roundhouses, and machinery, sidetracks, switches, and stockyards and cattle pens.[5] Note, however, that statutes employing the phrase "right-of-way" have frequently been held inapplicable to various buildings or structures owned by railroads, particularly with respect to buildings and structures located off the strip of land along which the line of the railroad runs, where the statute contains language indicating that the term should include any structures situated on such strip.[6]

Footnotes

1 CSX Transp., Inc. v. Chicago and North Western Transp. Co., Inc., 62 F.3d 185 (7th Cir. 1995).
2 Dakota, Minnesota & Eastern R.R. Corp. v. Wisconsin & Southern R.R. Corp., 657 F.3d 615 (7th Cir. 2011).
3 Atlantic & N.C.R. Co. v. City of Newbern, 147 N.C. 165, 60 S.E. 925 (1908).

4 Chicago, B. & Q.R. Co. v. Cass County, 72 Neb. 489, 101 N.W. 11 (1904).

5 St. Louis, I.M. & S. Ry. Co. v. Miller County, 67 Ark. 498, 55 S.W. 926 (1900) (stockyards and cattle pens); Chicago & N.W. Ry. Co. v. People, 195 Ill. 184, 62 N.E. 869 (1902).

6 Chicago, B. & Q.R. Co. v. Box Butte County, 99 Neb. 208, 155 N.W. 881 (1915).

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Part Five. Taxation of Particular Business Enterprises

XVI. Transportation and Communications

B. Railroads

2. Discriminatory Assessments Prohibited Under Railroad Revitalization and Regulatory Reform Act

§ 319. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2245, 2442, 2560

Because railroads are easy prey for state and local tax assessors, in that railroads are nonvoting, often nonresident, targets for local taxation that cannot easily remove themselves from the locality,[1] the Railroad Revitalization and Regulatory Reform Act of 1976 (4-R Act) prohibits states and their subdivisions from discriminating against interstate commerce by assessing rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.[2] In addition, states and their subdivisions may not levy or collect ad valorem property taxes on rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.[3] Both locally and centrally assessed properties must be considered when determining whether taxation of railroads is discriminatory.[4]

These statutory provisions must be construed narrowly as a railway company asserting the protection of this statute is a private entity benefitting from a special provision exempting it from discriminatory taxation.[5] A railroad challenging a state tax under the 4-R Act need only show, by a preponderance of the evidence,[6] that the tax has a discriminatory effect; it need not show that the State intended to discriminate.[7]

An ad valorem tax on tangible personal property, as applied to railroad cars, discriminates against railroads when their personal property is taxed while most commercial and industrial personal property in the state is not taxed because of exemptions for personal property used in those other businesses.[8] A state's real property taxation scheme, which denominates, as real property,

all property of railroads whether such property is in fact real or personal, is discriminatory and, as such, violates the 4-R Act where the State has no generally applicable personal property tax.[9]

CUMULATIVE SUPPLEMENT

Cases:

Diesel fuel taxes imposed on railroads and motor carriers during seven-year period were roughly equivalent, and thus taxes did not violate Railroad Revitalization and Regulatory Reform Act provision barring discriminatory taxation against rail carriers, where railroads and motor carriers' tax rates differed by between less than half of once cent per gallon and five cents per gallon, and excess tax burden for railroads was, at most, an extra 5.2 cents per gallon. 49 U.S.C.A. § 11501(b). Illinois Central Railroad Company v. Tennessee Department of Revenue, 748 Fed. Appx. 26 (6th Cir. 2018), petition for certiorari filed (U.S. Jan. 2, 2019).

[END OF SUPPLEMENT]

Footnotes

1 Department of Revenue of Oregon v. ACF Industries, Inc., 510 U.S. 332, 114 S. Ct. 843, 127 L. Ed. 2d 165 (1994); MHC, Inc. v. Oregon Dept. of Revenue, 66 F.3d 1082 (9th Cir. 1995).

2 49 U.S.C.A. § 11501(b)(1).

3 49 U.S.C.A. § 11501(b)(3).

4 CSX Transp., Inc. v. Board of Public Works of State of W.Va., 312 F. Supp. 2d 839 (S.D. W. Va. 2004) (state's method approved by court).

5 Wheeling & Lake Erie R. Co. v. Public Utility Com'n of Com. of Pa., 141 F.3d 88 (3d Cir. 1998).

6 CSX Transp., Inc. v. Board of Public Works of State of W.Va., 95 F.3d 318 (4th Cir. 1996); Burlington Northern R. Co. v. James, 911 F.2d 1297 (8th Cir. 1990).

7 General American Transp. Corp. v. Com. of Kentucky, 791 F.2d 38 (6th Cir. 1986); Burlington Northern R. Co. v. James, 911 F.2d 1297 (8th Cir. 1990); Louisville and Nashville R. Co. v. Department of Revenue, State of Fla., 736 F.2d 1495 (11th Cir. 1984); Northwest Airlines, Inc. v. Department of Revenue, 325 Or. 530, 943 P.2d 175 (1997).

8 Trailer Train Co. v. Leuenberger, 885 F.2d 415 (8th Cir. 1988).

9 Burlington Northern R. Co., Inc. v. Bair, 60 F.3d 410, 42 Fed. R. Evid. Serv. 987 (8th Cir. 1995).

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Part Five. Taxation of Particular Business Enterprises

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B. Railroads

2. Discriminatory Assessments Prohibited Under Railroad Revitalization and Regulatory Reform Act

§ 320. Unreasonable burden on interstate commerce

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2245, 2442, 2560

Four specific acts unreasonably burden and discriminate against interstate commerce under the 4-R Act, and a State may not do any of them:

(1) Assess rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property;

(2) levy or collect a tax on an assessment that may not be made under the preceding item;

(3) levy or collect an ad valorem property tax on rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction;

(4) impose another tax that discriminates against a rail carrier providing transportation subject to the jurisdiction of the Surface Transportation Board.[1]

A state excise tax that applies to railroads but exempts their interstate competitors is subject to challenge under this provision, as a "tax that discriminates against a rail carrier," and a tax imposed on railroads when they purchase or consume diesel fuel constitutes "another tax" under the Act.[2]

Footnotes

1 49 U.S.C.A. § 11501(b).

2 CSX Transp., Inc. v. Alabama Dept. of Revenue, 131 S. Ct. 1101, 179 L. Ed. 2d 37 (2011).

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B. Railroads

2. Discriminatory Assessments Prohibited Under Railroad Revitalization and Regulatory Reform Act

§ 321. Exemptions and assessments

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2245, 2442, 2560

Since the "commercial and industrial property" referred to under the Railroad Revitalization and Regulatory Reform Act (4-R Act)[1] is taxed property, as opposed to taxable property,[2] railroads may not challenge property tax exemptions because exempt property is not part of the "commercial and industrial property" which serves as the comparison class against which discrimination is measured.[3] Note, however, that unjustifiably exempting local actors, as opposed to interstate entities, is prohibited discrimination under the 4-R Act.[4]

Assessments for bridge construction and maintenance costs are not "taxes,"[5] and thus, there is no violation of federal statute by state and local taxing units which require a railway company to pay a portion of the construction and maintenance costs for a new bridge spanning its leased railroad right-of-way.[6] Likewise, imposing the cost of installing a drainage ditch on a railroad does not constitute a tax in violation of the 4-R Act.[7] However, a so-called "annual maintenance assessment," imposed on railroad carriers to support a levee and drainage system, is a tax and not an assessment where the benefit of preventing floods is shared by all taxpayers.[8]

Practice Tip:

States are not prevented from using levies to recoup the costs of regulating railroad operations within the state.[9]

CUMULATIVE SUPPLEMENT

Cases:

A comparison class will support a discrimination claim under the Railroad Revitalization and Regulatory Reform Act only if it consists of individuals similarly situated to the claimant. 49 U.S.C.A. § 11501(b)(4). Alabama Dept. of Revenue v. CSX Transp., Inc., 135 S. Ct. 1136 (2015).

An alternative, roughly equivalent tax imposed on an interstate rail carrier's competitors is one possible justification that renders a tax disparity nondiscriminatory under the Railroad Revitalization and Regulatory Reform Act. 49 U.S.C.A. § 11501(b)(4). Alabama Dept. of Revenue v. CSX Transp., Inc., 135 S. Ct. 1136 (2015).

Rail carrier's challenge to Oregon's tax on intangible property of centrally assessed taxpayers, including rail carriers, while taxing only tangible property of locally assessed commercial and industrial taxpayers, was not a demand for exemptions offered to other taxpayers, and, therefore, could be brought under Railroad Revitalization and Regulatory Reform Act (4-R Act) prohibiting states from imposing discriminatory taxes against a rail carrier; Oregon's scheme could not create an intangible personal property tax exemption because it never created a generally applicable intangible personal property tax, from which to grant exemptions. 49 U.S.C.A. §§ 11501(a)(4), 11501(b)(4); Or. Rev. Stat. §§ 307.030, 308.210(1), 308.505(14)(a), 308.515(1), 308.555; Or. Admin. R. 150-307-0020. BNSF Railway Company v. Oregon Department of Revenue, 965 F.3d 681 (9th Cir. 2020).

In interstate rail carrier's action alleging that Alabama's tax scheme discriminated against railroads in violation of Railroad Revitalization and Regulatory Reform Act (4–R Act), any error was harmless in district court's ruling on remand that carrier's trains could operate on clear diesel and that if it chose to do so, it could avoid sales and use tax and instead pay excise tax, just like motor carriers, which would be perfectly nondiscriminatory; although ruling went beyond scope of mandate, which was limited to whether excise tax and sales and use tax were roughly equivalent, district court's alternative ruling was correct that excise tax was roughly equivalent to sales and use tax and, as result, it justified motor carrier exemption. 49 U.S.C.A. § 11501(b)(4); Ala. Code § 40-17-325. CSX Transportation, Inc. v. Alabama Department of Revenue, 886 F.3d 974 (11th Cir. 2018).

[END OF SUPPLEMENT]

Footnotes

1 49 U.S.C.A. § 11501(b)(1).

2 Department of Revenue of Oregon v. ACF Industries, Inc., 510 U.S. 332, 114 S. Ct. 843, 127 L. Ed. 2d 165 (1994).

3 Department of Revenue of Oregon v. ACF Industries, Inc., 510 U.S. 332, 114 S. Ct. 843, 127 L. Ed. 2d 165 (1994); Burlington Northern R. Co. v. Wisconsin Dept. of Revenue, 59 F.3d 55 (7th Cir. 1995).

4 CSX Transp., Inc. v. Alabama Dept. of Revenue, 131 S. Ct. 1101, 179 L. Ed. 2d 37 (2011).

5 As to assessments on rail companies, see § 323.

6 Wheeling & Lake Erie R. Co. v. Public Utility Com'n of Com. of Pa., 141 F.3d 88 (3d Cir. 1998).

7 Chicago and North Western Transp. Co. v. Webster County Bd. of Sup'rs, 71 F.3d 265 (8th Cir. 1995).

8 Kansas City Southern Ry. Co. v. Koeller, 653 F.3d 496 (7th Cir. 2011), cert. denied, 132 S. Ct. 855, 181 L. Ed. 2d 551 (2011).

9 Union Pacific R. Co. v. Public Utility Com'n of State of Or., 899 F.2d 854 (9th Cir. 1990).

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XVI. Transportation and Communications

B. Railroads

2. Discriminatory Assessments Prohibited Under Railroad Revitalization and Regulatory Reform Act

§ 322. Availability of federal courts

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2245, 2442, 2560

Forms

Am. Jur. Pleading and Practice Forms, State and Local Taxation § 39 (Complaint, petition, or declaration—To enjoin collection of special nonuniform tax on railroad property)

Although a federal statute provides that the federal district courts may not enjoin, suspend, or restrain the assessment, levy, or collection of any tax under state law where a plain, speedy, and efficient remedy may be had in the courts of the state,[1] a district court of the United States has jurisdiction, concurrent with other jurisdiction of courts of the United States and the states, to prevent a violation of the Railroad Revitalization and Regulatory Reform Act (4-R Act) when the ratio of assessed value to true market value of rail transportation property exceeds by at least 5% the ratio of assessed value to true market value of other commercial and industrial property in the same assessment jurisdiction.[2] An action to enforce the 4-R Act does not have to comply with state law requirements for suits challenging tax assessments.[3]

In assessing a railroad company's claim that a state's property tax assessment of its property is discriminatory, the role of the district court is to decide which statistical method of analysis correctly fixes the ratio of assessed value to true market value for commercial and industrial property.[4]

Practice Tip:

A railroad is not entitled to a preliminary injunction under the 4-R Act of an increased annual assessment unless the railroad can provide evidence of a possible irreparable injury. When only the money that had been assessed the railroad is at risk, the loss is not irreparable.[5]

Footnotes

1 28 U.S.C.A. § 1341.

2 49 U.S.C.A. § 11501(c).

3 Seminole Gulf Ry., L.P. v. Florida Dept. of Revenue, 248 F. Supp. 2d 1146 (M.D. Fla. 2003).

4 CSX Transp., Inc. v. Board of Public Works of State of W.Va., 312 F. Supp. 2d 839 (S.D. W. Va. 2004) (state's method approved by court).

5 Kansas City Southern R.Co. v. Borrowman, 2009 WL 2603113 (C.D. Ill. 2009), on reconsideration in part, 74 Fed. R. Serv. 3d 1019 (C.D. Ill. 2009).

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XVI. Transportation and Communications

B. Railroads

3. Levy, Assessment, Valuation, and Apportionment

§ 323. Assessment by state board or local officers

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2245, 2442, 2560

Forms

Am. Jur. Pleading and Practice Forms, State and Local Taxation § 39 (Complaint, petition, or declaration—To enjoin collection of special nonuniform tax on railroad property)

In some states, the tax laws provide for the assessment of the property of railroad companies for tax purposes by state boards, commissions, or other officers. Such statutes frequently contain language indicating that certain classes of property owned by railroad companies are to be assessed, at least under certain circumstances, by the taxing officials of local political subdivisions, such as counties, cities, or towns. While these enactments vary considerably in their precise terminology, it can be said generally that many of them, either expressly or as a matter of proper interpretation, anticipate that it is not all or every kind of the property of a railroad enterprise that is to be assessed by state officers,[1] and that the jurisdiction of the state authorities and that of the local officers is mutually exclusive, and an assessment made by either set of officials which represents in part property of the kind assessable by the other group is erroneous and will not support an action to recover the tax so levied unless the portion representing the property illegally assessed is clearly separable from the balance of the assessment.[2]

Footnotes

1 Chicago, B. & Q.R. Co. v. Box Butte County, 99 Neb. 208, 155 N.W. 881 (1915); Northern Pac. Ry. Co. v. Morton County, 32 N.D. 627, 156 N.W. 226 (1915); Northern Pac. Ry. Co. v. State, 84 Wash. 510, 147 P. 45 (1915); Terminal Warehouse Co. v. City of Milwaukee, 205 Wis. 607, 238 N.W. 513, 80 A.L.R. 247 (1931).

2 State of California v. Central Pac. R. Co., 127 U.S. 1, 8 S. Ct. 1073, 32 L. Ed. 150 (1888).

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§ 324. Principal or incidental use

Topic Summary | Correlation Table | References

West's Key Number Digest

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Property devoted principally to railroad uses and purposes may be assessable by the state board or commission, and not by local authorities, under statutes providing for state assessment of certain kinds of railroad property although it is not used exclusively for such purposes but is used incidentally or in part for other purposes.[1] There is, however, some authority to support the conclusion that under the proper circumstances, a single item of property used only partially for railroad purposes may be apportioned so that it is assessed by both the state and local authorities.[2]

Footnotes

1 Board of Equalization of Campbell County v. Louisville & N.R. Co., 139 Ky. 386, 33 Ky. L. Rptr. 78, 109 S.W. 303 (1908); Terminal Warehouse Co. v. City of Milwaukee, 205 Wis. 607, 238 N.W. 513, 80 A.L.R. 247 (1931).

2 People ex rel. Dunn v. Atchison, T. & S.F. Ry. Co., 206 Ill. 252, 68 N.E. 1059 (1903); In re United New Jersey R. & Canal Co., 75 N.J.L. 334, 68 A. 167 (N.J. Sup. Ct. 1907).

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§ 325. Future, intended, or prospective use

Topic Summary | Correlation Table | References

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Some courts espouse the position that it is only present use which determines whether railroad property is assessable by the state authorities and that property held for future or prospective railroad purposes is locally taxable.[1] Property in the process of construction or preparation for future use as railroad property is in a somewhat different category, with respect to the application to it of the principles relating to the propriety of regarding future or prospective uses of property in determining whether it is assessable locally or by the State, and such property is to be considered assessable by the state authorities where it is fairly within the plan upon which the work is being executed and is not actually used for other purposes.[2]

Footnotes

1 Terminal Warehouse Co. v. City of Milwaukee, 205 Wis. 607, 238 N.W. 513, 80 A.L.R. 247 (1931).

2 In re New York Bay R. Co., 75 N.J.L. 111, 66 A. 916 (N.J. Sup. Ct. 1907).

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XVI. Transportation and Communications

B. Railroads

3. Levy, Assessment, Valuation, and Apportionment

§ 326. Valuation

Topic Summary | Correlation Table | References

West's Key Number Digest

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In some jurisdictions, statutes require that, in determining the full value of the property of a railroad company, the assessing authority consider the cost approach, the market approach, and the income approach in its appraisal.[1] The use of discretion, or the appraiser's judgment, is inevitable in the valuation of railroad property for tax assessment purposes.[2] The use of a formula based on railroad track miles, both within and without the state, provides a fair method to calculate the income earned by a railroad that operates in the state and elsewhere.[3]

While the cost of construction, reproduction, or acquisition is an important item to be taken into account in determining the value of railroad property for tax purposes,[4] some courts use productiveness as a criterion.[5] In arriving at the productive value of railroad property, in connection with its valuation for tax purposes, the rental value of the road[6] and the earning capacity of its property are taken into account.[7] In other jurisdictions, the value of railroad property for ad valorem tax purposes is measured by the market value of the property as of the assessment date.[8]

In determining the correct valuation of the entire property of a railroad enterprise as a unit, it is proper to include an allowance for such intangible items as—

— the location of the taxpayer's line and the nature of the country through which it runs;

— density of traffic and volume of business along the line;

— nearby facilities for transacting railroad business, such as warehouses and docks, owned by private parties;

— the price at which the taxpayer purchases its fuel supply; and

— the resources of the country adjacent to the taxpayer's line, together with the density of the population living contiguous to it.[9]

Footnotes

1 Fall River County v. South Dakota Dept. of Revenue, 1999 SD 139, 601 N.W.2d 816 (S.D. 1999).

2 Fall River County v. South Dakota Dept. of Revenue, 1999 SD 139, 601 N.W.2d 816 (S.D. 1999).

3 CSX Transp., Inc. v. Director, Div. of Taxation, 393 N.J. Super. 235, 923 A.2d 252 (App. Div. 2007).

4 Nashville C. & St. L. Ry. v. Browning, 176 Tenn. 245, 140 S.W.2d 781 (1939), judgment aff'd, 310 U.S. 362, 60 S. Ct. 968, 84 L. Ed. 1254 (1940).

5 Detroit Citizens' St. R. Co. v. Common Council of City of Detroit, 125 Mich. 673, 85 N.W. 96 (1901); State v. Nevada Cent. R. Co., 28 Nev. 186, 81 P. 99 (1905).

6 Clark v. Vandalia R. Co., 172 Ind. 409, 86 N.E. 851 (1909).

7 State v. Nevada Cent. R. Co., 28 Nev. 186, 81 P. 99 (1905); Nashville C. & St. L. Ry. v. Browning, 176 Tenn. 245, 140 S.W.2d 781 (1939), judgment aff'd, 310 U.S. 362, 60 S. Ct. 968, 84 L. Ed. 1254 (1940).

8 Union Pacific R. Co. v. Department of Revenue, 315 Or. 11, 843 P.2d 864 (1992).

9 Northern Pac. Ry. Co. v. State, 84 Wash. 510, 147 P. 45 (1915).

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XVI. Transportation and Communications

B. Railroads

4. Rolling Stock

§ 327. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2245, 2442, 2560

A.L.R. Library

Situs of aircraft, rolling stock, and vessels for purposes of property taxation, 3 A.L.R.4th 837

Railroad rolling stock is intimately connected with the purposes and uses of the railroad track and superstructure, and the power of the legislature to treat it as realty for the purposes of taxation cannot be seriously questioned.[1] However, the Railroad Revitalization and Regulatory Reform Act (4-R Act) prohibits the imposition of taxes that discriminate against railroads,[2] and specialty railroad cars leased to shippers by independent car lines are included in the protected "rail transportation property"[3] as is railroad rolling stock in general.[4] While private railroad cars are considered personal property and are subject to a separate tax under a state's private railroad car tax law,[5] a discriminatory private car company personal property tax levied against the rolling stock of railroads is invalid as a violation of federal law.[6] While questions as to the situs of rolling stock as between states depend largely upon whether the ownership is by a resident or a nonresident,[7] this distinction appears to be of little importance in connection with questions as to the particular local taxing district within the taxing state in which personal property of the kind in question may or must be taxed. Thus, while the right of the legislature to regulate the situs of railroad rolling stock

for purposes of taxation as between the different local taxing districts of the state is plenary,[8] such situs is, where no special provision has been made, the city or town in which the owner's principal office is located.[9]

Where the unit valuation upon rolling stock is to be apportioned on a mileage basis, a distinction must be drawn between rolling stock used only locally upon a particular division or branch line of the taxpayer and rolling stock used generally over the taxpayer's entire system. The value of rolling stock of the first kind is apportioned among the counties through which such division or branch line runs according to the ratio between the mileage in a particular county and the total mileage of the division or branch in question and that of rolling stock of the latter kind is apportioned among the counties through which the entire system runs according to an analogous ratio based upon system mileage.[10]

The general principle that the fact that property which admittedly has a taxable situs within a state is used or employed in interstate or foreign commerce does not of itself render it immune from nondiscriminatory local taxation[11] is considered applicable to railroad rolling stock used in interstate commerce whether owned by a resident or nonresident.[12]

Footnotes

1 Norfolk & W. Ry. Co. v. Missouri State Tax Commission, 390 U.S. 317, 88 S. Ct. 995, 19 L. Ed. 2d 1201 (1968); City of Fort Worth v. Southland Greyhound Lines, 123 Tex. 13, 67 S.W.2d 361 (Comm'n App. 1933).

2 §§ 319, 321, 322.

3 General American Transp. Corp. v. Louisiana Tax Com'n, 680 F.2d 400 (5th Cir. 1982); ACF Industries Inc. v. California State Bd. of Equalization, 42 F.3d 1286 (9th Cir. 1994).

4 General American Transp. Corp. v. Com. of Kentucky, 791 F.2d 38 (6th Cir. 1986).

5 American Airlines, Inc. v. County of San Mateo, 12 Cal. 4th 1110, 51 Cal. Rptr. 2d 251, 912 P.2d 1198 (1996).

6 Dairyland Power Co-op. v. State Bd. of Equalization and Assessment, 238 Neb. 696, 472 N.W.2d 363 (1991).

7 §§ 328, 329.

8 City of Fort Worth v. Southland Greyhound Lines, 123 Tex. 13, 67 S.W.2d 361 (Comm'n App. 1933).

9 City of Fort Worth v. Southland Greyhound Lines, 123 Tex. 13, 67 S.W.2d 361 (Comm'n App. 1933); Board of Sup'rs of Elizabeth City County v. City of Newport News, 106 Va. 764, 56 S.E. 801 (1907).

10 State ex rel. Fensell v. Aldridge, 66 Ohio St. 598, 64 N.E. 562 (1902).

11 § 163.

12 Johnson Oil Refining Co. v. State of Oklahoma ex rel. Mitchell, 290 U.S. 158, 54 S. Ct. 152, 78 L. Ed. 238 (1933); St. Louis & E. St. L. Electric Ry. Co. v. State of Missouri ex rel. and to Use of Hagerman, 256 U.S. 314, 41 S. Ct. 488, 65 L. Ed. 946 (1921).

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§ 328. Resident or domestic corporate ownership

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West's Key Number Digest

West's Key Number Digest, Taxation 2245, 2442, 2560

In the absence of a showing that any specific railroad cars or average of cars are so continuously in any state other than that of the owner's domicile as to become taxable there, all of the railroad's rolling stock may be taxed by the State of the owner's residence,[1] but where it is shown that the rolling stock of a resident or domestic corporation is permanently located in other states and employed there in the course of the owner's business, never being physically present in the state of the owner's residence, it may not be taxed by the latter jurisdiction.[2] Habitual employment within a nondomiciliary state of a substantial number of railroad cars, albeit on irregular routes, may constitute sufficient contact to establish a tax situs permitting taxation by the nondomiciliary state of the average number of cars so engaged.[3]

Footnotes

1 Central R. Co. of Pa. v. Com. of Pa., 370 U.S. 607, 82 S. Ct. 1297, 8 L. Ed. 2d 720 (1962); People of State of New York ex rel. New York Cent. & H.R.R. Co. v. Miller, 202 U.S. 584, 26 S. Ct. 714, 50 L. Ed. 1155 (1906).

2 Union Refrigerator Transit Co. v. Commonwealth of Kentucky, 199 U.S. 194, 26 S. Ct. 36, 50 L. Ed. 150 (1905).

3 Central R. Co. of Pa. v. Com. of Pa., 370 U.S. 607, 82 S. Ct. 1297, 8 L. Ed. 2d 720 (1962).

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§ 329. Nonresident or foreign corporate ownership

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West's Key Number Digest

West's Key Number Digest, Taxation 2245, 2442, 2560

A state tax imposed, in lieu of local taxes, on rolling stock which is owned by nonresident corporations having no domicil in the state and which is operated over railroads within the state is not objectionable, under the Commerce Clause, as an attempt to compel nonresidents doing interstate business in the state to declare a local domicil, if the amount and method of computing the tax are not in question and if it does not operate to discriminate in some substantial way between the property of such nonresidents and that of residents or domiciled nonresidents.[1]

In the ordinary situation where railroad engines, cars, etc. are owned and operated as a fleet by a single corporation, association, or individual, and only a limited number of them are within a state other than that of the owner's domicil at any time, the size of this number and the identity of each unit composing it constantly changing as the cars and engines pass continuously into, through, or out of the state, it is clear that such state could not tax every piece of rolling stock brought or sent within its borders by the owner during a given period of time since, considered separately, each car, engine, etc. cannot be said to have a situs within the state; it is only temporarily present.[2] Assessing the tax on the basis of the average number within the state over a length of time, from all viewpoints, is the fairest basis.[3]

Footnotes

1 Central R. Co. of Pa. v. Com. of Pa., 370 U.S. 607, 82 S. Ct. 1297, 8 L. Ed. 2d 720 (1962); General American Tank Car Corporation v. Day, 270 U.S. 367, 46 S. Ct. 234, 70 L. Ed. 635 (1926).

2 Union Refrigerator Transit Co. v. Lynch, 177 U.S. 149, 20 S. Ct. 631, 44 L. Ed. 708 (1900); Tamble v. Pullman Co., 207 F. 30 (C.C.A. 6th Cir. 1913).

3 Johnson Oil Refining Co. v. State of Oklahoma ex rel. Mitchell, 290 U.S. 158, 54 S. Ct. 152, 78 L. Ed. 238 (1933); St. Louis Southwestern Ry. Co. v. State Tax Commission of Mo., 319 S.W.2d 559 (Mo. 1959); Shaffer Oil & Refining Co. v. Treasurer of Creek County, 1935 OK 1172, 175 Okla. 6, 52 P.2d 76 (1935).

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Research References

West's Key Number Digest

West's Key Number Digest, Commerce 62.71
West's Key Number Digest, Taxation 2246, 2561

A.L.R. Library

A.L.R. Index, Income Tax
A.L.R. Index, Profits or Income
A.L.R. Index, Taxes
West's A.L.R. Digest, Commerce 62.71
West's A.L.R. Digest, Taxation 2246, 2561

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West's Key Number Digest

West's Key Number Digest, Commerce 62.71
West's Key Number Digest, Taxation 2246, 2561

A.L.R. Library

Validity, Construction, and Application of State Taxes on Revenues and Income from Communications Satellite Services, 51 A.L.R.6th 257

If a company directly facilitates two-way communication between a significant number of unrelated persons or businesses, that company has been deemed a "telephone company" assessable as a public utility for property tax purposes.[1] A cellular service company is a "telephone company" for purposes of ad valorem taxation where people use telephone services and cellular services interchangeably, communication occurs between the two types of service seamlessly, and the dictionary definition of "telephone" is "an instrument for reproducing sounds at a distance," which applies to cellular service.[2]

Practice Tip:

For purposes of a statute requiring a state commissioner of revenue, not local assessors, to determine the valuation of the personal property of telephone and telegraph companies for property tax purposes, factors to be considered when determining whether the taxpayer qualifies as a "telephone or telegraph company" include—

— financial receipts the telephone service brings to the company;

— the proportion of the entire income that the telephone receipts comprise;

— the percentage of the entire capital that is invested in telephone services;

— the number of persons employed in telephone services as compared with the total number of employees of the company;and

— the ratio of telephone service to the entire business activities of the company.[3]

Footnotes

1 U.S. Transmission Systems, Inc. v. Board of Assessment Appeals of State of Colo., 715 P.2d 1249 (Colo. 1986); In re United Teleservices, Inc., 267 Kan. 570, 983 P.2d 250 (1999) (reseller of long-distance services). As to the state and local taxation of public utilities, see §§ 353 to 356.

2 Airtouch Communications, Inc. v. Department of Revenue, State of Wyo., 2003 WY 114, 76 P.3d 342 (Wyo. 2003).

3 RCN-BecoCom, LLC v. Commissioner of Revenue, 443 Mass. 198, 820 N.E.2d 208 (2005).

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§ 331. Taxable property

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2246, 2561

Whether particular telecommunications property is taxable is a question decided under state statutes. It has been held that the poles, wires, and central office equipment of telecommunications companies do not constitute fixtures and, thus, are not taxable by a local governmental unit as realty even if the equipment is placed in the ground or bolted to buildings, has a long life expectancy, and is highly durable, where the equipment is readily removable and transportable without affecting the utility of the underlying land, buildings, or equipment, and the companies intend to maintain the equipment as personalty.[1] A telecommunications corporation's personal property, poles, and lines located in public ways has been held not taxable by cities in which the property is located if there is no explicit statutory authorization.[2] In another jurisdiction, however, telecommunications equipment connected to a water tower or placed on a roof is taxable, and a cell tower base station is a taxable fixture.[3]

If telecommunications equipment is capable of performing its intended function without regard to specific features of the land, and if the land will retain its utility even without the communications equipment, the equipment is not intertwined with the underlying realty and, therefore, is not taxable as realty.[4]

A telephone utility's unutilized cable, existing in the form of dead and bad wire pairs, is not property "used in business," and thus, the utility is entitled to take personal property tax deductions for the cable.[5] On the other hand, a taxpayer's empty conduit pipes running through a municipality which required them were "used in business" although the taxpayer claimed that it did not want or need to install them and could not use them; the taxpayer reported the pipes on its annual report for the tax year in question and had the authority to sell the pipes.[6]

"House drops" which connect the main cables of a cable television company with the individual residences of customers are personalty belonging to the cable television company rather than fixtures belonging to homeowners, and thus, the cable television company is properly subject to personal property tax assessments on house drops.[7] A cable television distributor's "head-end" equipment, used to gather television signals and transmit them over a cable distribution system to subscribers, is machinery used in the distributor's business and, thus, is subject to local taxation.[8] However, "station connects" or "house drops" may be deemed fixtures attached to the real estate of the subscriber and therefore not subject to taxation as personal property belonging to the cable television company if the intention of the party annexing them to realty is to make them permanent accessions to the freehold. Such intention may be manifested when the cable television distributor does not seek the return of the station connects upon disconnection of service to the customer.[9]

CUMULATIVE SUPPLEMENT

Cases:

Cellular telephone service provider's base transceiver stations and large rectangular antennas mounted to the exterior of buildings were inclosures for electrical conductors under the tax statute's definition of real property; the transceiver stations were essentially cabinets that housed cables and other electrical components and provided battery power, and the antennas were part of the transceiver stations. N.Y. RPTL § 102(12)(i). T-Mobile Northeast, LLC v. DeBellis, 32 N.Y.3d 594, 94 N.Y.S.3d 211, 118 N.E.3d 873 (2018).

Statute, segregating intangible personal property for state taxation only, and statute, classifying personal property, tangible in fact, used in cable television businesses as intangible personal property, are general tax statutes that the Supreme Court construes against the government and in favor of the taxpayer. Va. Code Ann. §§ 58.1-1100, 58.1-1101(A)(2a). Verizon Online LLC v. Horbal, 796 S.E.2d 409 (Va. 2017).

[END OF SUPPLEMENT]

Footnotes

1 New England Tel. & Tel. Co. v. City of Franklin, 141 N.H. 449, 685 A.2d 913 (1996).
Telecommunications companies' licenses for the placement of poles and wires on public ways do not constitute easements and, thus, are not taxable as realty. New England Tel. & Tel. Co. v. City of Franklin, 141 N.H. 449, 685 A.2d 913 (1996) (statute providing for companies' interest refers to that interest as a license and also provides that the right to maintain wires and supports attached to a building or the land of others does not create easements).

2 Verizon New England Inc. v. Board of Assessors of Boston, 81 Mass. App. Ct. 444, 963 N.E.2d 1210 (2012) (although personal property consisting of "construction work in progress" is taxable by the city where the property is located).

3 Nextel of New York, Inc. v. Assessor for Village of Spring Valley, 4 Misc. 3d 233, 771 N.Y.S.2d 853 (Sup 2004); Voicestream Wireless Corp. v. Assessor of City of Troy, 2 Misc. 3d 723, 771 N.Y.S.2d 335 (Sup 2003).

4 New England Tel. & Tel. Co. v. City of Franklin, 141 N.H. 449, 685 A.2d 913 (1996).

5 United Tel. Co. of Ohio v. Tracy, 84 Ohio St. 3d 506, 1999-Ohio-366, 705 N.E.2d 679 (1999).

6 Am. Fiber Sys., Inc. v. Levin, 125 Ohio St. 3d 374, 2010-Ohio-1468, 928 N.E.2d 695 (2010).

7 Continental Cablevision of Michigan, Inc. v. City of Roseville, 430 Mich. 727, 425 N.W.2d 53 (1988).

8 Warner Amex Cable Communications Inc. v. Board of Assessors of Medford, 396 Mass. 1002, 485 N.E.2d 176 (1985).

9 T-V Transmission, Inc. v. County Bd. of Equalization of Pawnee County, 215 Neb. 363, 338 N.W.2d 752 (1983).

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§ 332. Taxable property—Intangibles

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2246, 2561

The goodwill of a telecommunications company is intangible property, within the meaning of a state constitutional provision governing the authority of the legislature to tax intangible property, in that it has no intrinsic and marketable value in and of itself; it is not taxable as property under the provision in question.[1] Intangible property not exempted by a constitution's definition is taxable and properly considered under the unit method, and subtracting the value of exempt intangible property from the unit value gives the public service corporation the full benefit of the exemption of such property.[2] Under some statutes, the assessor may be required to consider a telecommunication company's intangibles, as part of a unit, when valuing the company's property.[3]

Footnotes

1 T-Mobile USA, Inc. v. Utah State Tax Com'n, 2011 UT 28, 254 P.3d 752 (Utah 2011).

2 Southwestern Bell Telephone Co. v. Oklahoma State Bd. of Equalization, 2009 OK 72, 231 P.3d 638 (Okla. 2009).

3 Qwest Corp. v. Colorado Div. of Property Taxation, Dept. of Local Affairs, 2011 WL 3332876 (Colo. App. 2011).

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1. In General

§ 333. Effect of Commerce Clause

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Commerce 62.71
West's Key Number Digest, Taxation 2246, 2561

Many of the general principles which determine the validity, under the Commerce Clause of the Federal Constitution, of the taxation of transportation and communication companies are applicable in determining the validity under that clause of tax statutes applicable to telecommunication companies. A tax upon their gross receipts derived from business which is both interstate and intrastate is not invalid under the Commerce Clause if confined to the portion representing intrastate business.[1] Neither is a tax on foreign corporations measured by all of its capital stock, with no apportionment according to the capital employed within the taxing state, invalid as an undue burden on interstate commerce.[2]

Intangible property may be taxed by the State in which the property has a determinable situs.[3] The imposition of a property tax on telephone circuits used by a telephone company to transmit phone calls in and out of a state and which are situated in the taxing state is consistent with the Commerce Clause if the circuits provide a sufficient nexus between the telephone company and the state.[4]

Footnotes

1 Pacific Telephone & Telegraph Co. v. Tax Commission of State of Washington, 297 U.S. 403, 56 S. Ct. 522, 80 L. Ed. 760, 105 A.L.R. 1 (1936).

2 Western Union Telegraph Co. v. Andrews, 216 U.S. 165, 30 S. Ct. 286, 54 L. Ed. 430 (1910); Ludwig v. Western Union Telegraph Co., 216 U.S. 146, 30 S. Ct. 280, 54 L. Ed. 423 (1910).

3 U.S. Transmission Systems, Inc. v. Board of Assessment Appeals of State of Colo., 715 P.2d 1249 (Colo. 1986).

4 U.S. Transmission Systems, Inc. v. Board of Assessment Appeals of State of Colo., 715 P.2d 1249 (Colo. 1986).

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1. In General

§ 334. Effect of Commerce Clause—Broadcasters

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Commerce 62.71
West's Key Number Digest, Taxation 2246, 2561

A.L.R. Library

Subjecting radio broadcasting business to local taxation as burden on commerce, 11 A.L.R.2d 986

A primary legal principle peculiar to the taxation of radio broadcasting and wireless telecommunication enterprises is that the business conducted by them, where it involves the transmission of messages from one state to other states, foreign countries, or vessels on the high seas, constitutes interstate or foreign commerce for purposes of taxation.[1] Consequently, a tax on the gross receipts derived from such business is invalid.[2] However, the fact that programs originating in and broadcast from the studio of a local radio broadcasting station, carrying advertising of local business to secure local patronage, may be heard by listeners in other states does not necessarily give their broadcasting the character of interstate commerce so as to preclude the imposition of a state license tax measured by gross receipts of that portion of the local station's business.[3]

Footnotes

1 Fisher's Blend Station v. Tax Commission of State of Washington, 297 U.S. 650, 56 S. Ct. 608, 80 L. Ed. 956 (1936).

2 Fisher's Blend Station v. Tax Commission of State of Washington, 297 U.S. 650, 56 S. Ct. 608, 80 L. Ed. 956 (1936).

3 Albuquerque Broadcasting Co. v. Bureau of Revenue, 51 N.M. 332, 184 P.2d 416, 11 A.L.R.2d 966 (1947).

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2. Levy, Assessment, Valuation, and Apportionment

§ 335. Valuation methods

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2561

The rule asserting the propriety of the use of the unitary method of assessment in the taxation of transportation and communication companies[1] has been applied in connection with telecommunication companies.[2] However, it is permissible for a tax court to determine the value of the property of a telecommunications company by using the "historic cost less depreciation" method of appraisal, rather than the unitary method favored by the county, where the former method was generally accepted in the relevant community, and some of the unitary appraisals presented were incorrect, including the company's appraisal which was based on the wrong unit.[3]

Under state law, the cost approach has been held to be the appropriate method of calculating the value of a cable television company's tangible property whereby the appraiser starts with the company's self-reported value, considers a series of statutory factors, and adjusts it to account for lower replacement costs and depreciation.[4]

CUMULATIVE SUPPLEMENT

Cases:

Property belonging to certain entities, including telephone companies, that typically hold property in multiple counties is assessed for tax purposes on a unitary basis, that is, the property's value depends on interrelation and operation of entire utility

as a unit. Cal. Const. art. 13, § 19; Cal. Rev. & Tax. Code § 721. Sprint Telephony PCS, L.P. v. State Board of Equalization, 238 Cal. App. 4th 871, 189 Cal. Rptr. 3d 673 (1st Dist. 2015).

Taxpayer satisfied its burden, pursuant to franchise-tax statute governing book value of accounts, of showing that its investments in its non-unitary subsidiaries were not includable in its franchise-tax base; the non-unitary assets represented non-unitary investments with no connection to taxpayer's business in Mississippi, and the value of taxpayer's non-unitary subsidiaries was not capital employed in the state, nor was it business that was actually being done or carried on in Mississippi. Miss. Code Ann. §§ 27-13-9(1), 27-13-11. Mississippi Department of Revenue v. Comcast of Georgia/Virginia, Inc., 300 So. 3d 532 (Miss. 2020).

[END OF SUPPLEMENT]

Footnotes

1 § 313.

2 Western Union Telegraph Co. v. State of Missouri, 190 U.S. 412, 23 S. Ct. 730, 47 L. Ed. 1116 (1903); Beaver County v. WilTel, Inc., 2000 UT 29, 995 P.2d 602 (Utah 2000).

3 T-Mobile USA, Inc. v. Utah State Tax Com'n, 2011 UT 28, 254 P.3d 752 (Utah 2011).

4 In re Litestream Technologies, LLC, 337 B.R. 705 (Bankr. M.D. Fla. 2006) (also holding that appraiser may disregard the price that a purchaser paid at the sale of company's assets and other methods of valuation).

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C. Telecommunication Companies

2. Levy, Assessment, Valuation, and Apportionment

§ 336. Apportionment

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2561

License, business, or occupation taxes imposed for revenue purposes upon telecommunication companies engaged in the transmission of interstate communications have, where no attempt has been made to apportion the imposition to the local business of the taxpayer, been deemed invalid on the theory that interstate communication constitutes commerce which must be free from the control of state regulations except such as are strictly of a police character.[1] However, a license, business, or occupation tax imposed by a State or duly authorized municipality upon telecommunication companies is not invalid under the Commerce Clause if confined to the local business of the taxpayer even though the latter is also engaged in the transmission of interstate communications; this principle is applicable without consideration of the taxpayer's character as a corporation or the manner in which the tax is computed.[2]

Footnotes

1 Postal Telegraph-Cable Co. v. Mayor, Etc. of City of Cordele, 139 Ga. 126, 76 S.E. 744 (1912).

2 Postal Telegraph-Cable Co. v. City of Richmond, 249 U.S. 252, 39 S. Ct. 265, 63 L. Ed. 590 (1919); Williams v. City of Talladega, 226 U.S. 404, 33 S. Ct. 116, 57 L. Ed. 275 (1912); Southern Bell Tel. & Tel. Co. v. Town of Harrisonburg, 111 Va. 494, 69 S.E. 348 (1910).

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Part Five. Taxation of Particular Business Enterprises

XVI. Transportation and Communications

D. Shipping; Carriage by Water

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Commerce 76, 78
West's Key Number Digest, Taxation 2126, 2244

A.L.R. Library

A.L.R. Index, Income Tax
A.L.R. Index, Profits or Income
A.L.R. Index, Taxes
West's A.L.R. Digest, Commerce 76, 78
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§ 337. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Commerce 76, 78
West's Key Number Digest, Taxation 2244

A.L.R. Library

Situs of aircraft, rolling stock, and vessels for purposes of property taxation, 3 A.L.R.4th 837

The broad principle that the states may not impose taxes upon the privilege of engaging in interstate and foreign commerce[1] is, where a shipping enterprise embraces transportation from a point in one state to points in other states or foreign countries, applicable,[2] and various state or municipal license or excise taxes imposed upon some phase of the shipping business have accordingly been held invalid.[3] However, a state or municipality may impose a charge or fee on those engaged in the shipping business to meet the cost of local regulation of harbor traffic,[4] and a city may exact reasonable compensation for wharfage facilities offered by it without impairment of the Commerce Clause.[5] However, a passenger wharfage fee imposed by a port authority was found not to be a reasonable fee for general services rendered but rather an impermissible duty of tonnage[6] and thus did not comport with the Tonnage Clause;[7] the fee was used for raising general revenues and for projects which did not benefit the ferry passengers and was used for non-ferry services not available to ferry passengers.[8]

Some of the principles applicable to transportation companies generally have been applied with respect to shipping companies or carriers by water. Thus, the principle that state taxes upon the gross receipts of transportation companies doing an interstate business are invalid unless confined to that portion of the receipts attributable to business done within the taxing state[9] has been so applied.[10]

Footnotes

1 § 164.

2 Gloucester Ferry Co. v. Com. of Pennsylvania, 114 U.S. 196, 5 S. Ct. 826, 29 L. Ed. 158 (1885).

3 Harmon v. City of Chicago, 147 U.S. 396, 13 S. Ct. 306, 37 L. Ed. 216 (1893); City of St. Louis v. Consolidated Coal Co., 158 Mo. 342, 59 S.W. 103 (1900).

4 Clyde Mallory Lines v. State of Alabama ex rel. State Docks Commission, 296 U.S. 261, 56 S. Ct. 194, 80 L. Ed. 215 (1935).

5 Am. Jur. 2d, Wharves § 28.

6 As to duties of tonnage, see §§ 338, 339.

7 U.S. Const. Art. I, § 10, cl. 3.

8 Bridgeport and Port Jefferson Steamboat Co. v. Bridgeport Port Authority, 567 F.3d 79 (2d Cir. 2009), cert. denied, 130 S. Ct. 1075, 175 L. Ed. 2d 887 (2010).

9 §§ 309 to 316.

10 People of State of New York ex rel. Cornell Steamboat Co. v. Sohmer, 235 U.S. 549, 35 S. Ct. 162, 59 L. Ed. 355 (1915).

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Part Five. Taxation of Particular Business Enterprises

XVI. Transportation and Communications

D. Shipping; Carriage by Water

§ 338. Property taxes; duties of tonnage

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Commerce 76, 78
West's Key Number Digest, Taxation 2126, 2244

Under the U.S. Constitution, without the consent of Congress, a State may not lay any duty of tonnage on ships.[1] Thus, taxes may not be imposed by a state or municipal authority upon ships or vessels as instruments of commerce when they operate as a charge for the privilege of entering, trading in, lying in, or departing from a port or plying in navigable waters.[2] Even if the statute is worded so as to be a value-related tax on personal property or related to services provided to a vessel, a court will look to see whether the statute is, in reality, a duty of tonnage and thus illegal.[3] However, a State may, without violating the constitutional prohibitions against tonnage duties or unduly interfering with interstate commerce,[4] levy a property tax upon ships or vessels having a taxable situs within its jurisdictional limits.[5]

Observation:

The purpose of the Tonnage Clause is to prevent states from nullifying the constitutional prohibition against import and export duties[6] by taxing the vessels transporting the merchandise.[7]

Footnotes

1 U.S. Const. Art. I, § 10, cl. 3.

2 Am. Jur. 2d, Shipping § 77.

3 Polar Tankers, Inc. v. City of Valdez, Alaska, 557 U.S. 1, 129 S. Ct. 2277, 174 L. Ed. 2d 1 (2009).

4 Thompson v. Day, 143 La. 1086, 79 So. 870, 8 A.L.R. 660 (1918); Guinness v. King County, 32 Wash. 2d 503, 202 P.2d 737, 6 A.L.R.2d 1361 (1949).

5 Thompson v. Day, 143 La. 1086, 79 So. 870, 8 A.L.R. 660 (1918).

6 U.S. Const. Art. I, § 10, cl. 2.

7 Polar Tankers, Inc. v. City of Valdez, Alaska, 557 U.S. 1, 129 S. Ct. 2277, 174 L. Ed. 2d 1 (2009).

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D. Shipping; Carriage by Water

§ 339. Apportionment

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Commerce 76
West's Key Number Digest, Taxation 2126, 2244

The apportionment principle, applied in a number of cases to railroads and communications,[1] has been applied to the taxation of vessels moving in interstate operations on inland waters.[2] The Commerce Clause of the Federal Constitution does not preclude the assessment, for local ad valorem taxes, of vessels owned by a carrier engaged in interstate commerce and used within the taxing state where such assessment is based on the ratio between the total number of miles of the carrier's lines in the state and the total number of miles of the entire line,[3] and such an assessment does not violate the Due Process Clause.[4]

For taxation purposes, a vessel that is completely inoperative is no different from any other tangible personal property which is movable on land or water.[5]

Footnotes

1 §§ 288, 289, 309, 319 to 325.

2 Standard Oil Co. v. Peck, 342 U.S. 382, 72 S. Ct. 309, 96 L. Ed. 427, 63 Ohio L. Abs. 559, 26 A.L.R.2d 1371 (1952); Ott v. Mississippi Val. Barge Line Co., 336 U.S. 169, 69 S. Ct. 432, 93 L. Ed. 585 (1949).

3 Ott v. Mississippi Val. Barge Line Co., 336 U.S. 169, 69 S. Ct. 432, 93 L. Ed. 585 (1949).

4 Ott v. Mississippi Val. Barge Line Co., 336 U.S. 169, 69 S. Ct. 432, 93 L. Ed. 585 (1949).

5 Ships & Power Equipment Corporation v. San Diego County, 93 Cal. App. 2d 522, 209 P.2d 143 (4th Dist. 1949).

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Research References

West's Key Number Digest

West's Key Number Digest, Commerce 62.2
West's Key Number Digest, Taxation 2244, 2248, 2250, 2559

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A.L.R. Index, Profits or Income
A.L.R. Index, Taxes
West's A.L.R. Digest, Commerce 62.2
West's A.L.R. Digest, Taxation 2244, 2248, 2250, 2559

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Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 69, 70, 269, 271

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§ 340. Air transport companies

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2244

A.L.R. Library

Situs of aircraft, rolling stock, and vessels for purposes of property taxation, 3 A.L.R.4th 837

Forms

Am. Jur. Pleading and Practice Forms, State and Local Taxation § 69 (Complaint, petition, or declaration—For refund of property taxes—Wrongful assessment of airplane used as part of fleet in interstate commerce)

Am. Jur. Pleading and Practice Forms, State and Local Taxation § 70 (Complaint, petition, or declaration—For refund of property taxes—For declaratory relief—Shared rental facility in airport)

Aircraft, airports, airfields, and air transportation companies and their property and business are governed by the same general principles with respect to their liability to taxation as apply to other properties and other businesses under similar circumstances.[1] An airplane may be taxed just as any other personal property is taxed, in the place where it is located rather than at the domicil

of its owner; if owned and wholly used in business in another state, it need not be listed for taxation in the owner's state of residence.[2] Airplanes that a company operates are "situate within" the state under its tax law where the company's fleet of airplanes has established a tax situs in the state.[3]

Observation:

A state property tax assessed on airplanes operated by a company relates to opportunities, benefits, or protections conferred by the State such that the tax is consistent with due process, where the assessment of tax is limited to the proportion of value of the airplanes commensurate with the proportion of time the airplanes spend in the state, because, while in the state, the airplanes enjoy the protection of the state's criminal laws, search and rescue services, and opportunities for further commerce.[4]

Local governmental units cannot tax aircraft that fly over them for a few seconds or minutes as there is no substantial or tangible nexus between the tax-levying entities and the aircraft.[5]

An apportioned ad valorem tax levied by a State on the flight equipment of an interstate air carrier does not conflict with the Commerce Clause where the tax does not discriminate against the interstate carrier and does not prescribe an unreasonable method of apportionment.[6] Moreover, federal statutes regulating aviation, and enacted pursuant to the Commerce Clause, do not preclude a state from levying an apportioned ad valorem tax on the flight equipment of an interstate air carrier which lands in and departs from airports within the state on regular schedules notwithstanding that the carrier is not incorporated in the state and does not have its principal place of business or home port there.[7] Specifically, a State or political subdivision of a State may levy or collect a tax on or related to a flight of a commercial aircraft or an activity or service on the aircraft only if the aircraft takes off or lands in the state or political subdivision as part of the flight.[8]

A State or its political subdivision cannot levy or collect a tax on the sale of air transportation or the gross receipts from air commerce or transportation.[9]

Footnotes

1 People of State of New York ex rel. New York Cent. & H.R.R. Co. v. Miller, 202 U.S. 584, 26 S. Ct. 714, 50 L. Ed. 1155 (1906).

2 People of State of New York ex rel. New York Cent. & H.R.R. Co. v. Miller, 202 U.S. 584, 26 S. Ct. 714, 50 L. Ed. 1155 (1906).

3 Flight Options, LLC v. State, Dept. of Revenue, 172 Wash. 2d 487, 259 P.3d 234 (2011).

4 Flight Options, LLC v. State, Dept. of Revenue, 172 Wash. 2d 487, 259 P.3d 234 (2011).

5 Salt Lake City Corp. v. Property Tax Div. of Utah State Tax Com'n, 1999 UT 41, 979 P.2d 346 (Utah 1999).

6 Braniff Airways v. Nebraska State Bd. of Equalization and Assessment, 347 U.S. 590, 74 S. Ct. 757, 98 L. Ed. 967 (1954).

7 Braniff Airways v. Nebraska State Bd. of Equalization and Assessment, 347 U.S. 590, 74 S. Ct. 757, 98 L. Ed. 967 (1954).

8 49 U.S.C.A. § 40116(c).

9 49 U.S.C.A. § 40116(b).

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Part Five. Taxation of Particular Business Enterprises

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§ 341. Air transport companies—Discriminatory taxation

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2244

A State, political subdivision of a State, or authority acting for a state or political subdivision may not unreasonably burden and discriminate against interstate commerce by assessing air carrier transportation property at a value that has a higher ratio to the true market value of the property than the ratio that the assessed value of other commercial and industrial property of the same type in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.[1] Both de facto and de jure discrimination in ad valorem taxation are prohibited.[2] Discriminatory intent is not required for a violation of federal statutes prohibiting discriminatory state taxation of interstate transportation property; rather, such statutes prohibit any act that results in discriminatory assessment or taxation.[3] An airline states a claim for de facto discrimination in taxation based on the unequal enforcement of tax laws by alleging that its property is effectively assessed at a higher value because some commercial and industrial property escaped taxation provided that, to prevail on the claim, the airline show that any unassessed and underassessed personal property results from a practice or policy on the assessor's part that is either targeted to disadvantage or that has an unreasonably disparate effect on the airline.[4]

Footnotes

1 49 U.S.C.A. § 40116(d).

2 American Airlines, Inc. v. County of San Mateo, 12 Cal. 4th 1110, 51 Cal. Rptr. 2d 251, 912 P.2d 1198 (1996).

3 Northwest Airlines, Inc. v. Department of Revenue, 325 Or. 530, 943 P.2d 175 (1997).

4 American Airlines, Inc. v. County of San Mateo, 12 Cal. 4th 1110, 51 Cal. Rptr. 2d 251, 912 P.2d 1198 (1996).

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E. Miscellaneous Companies

§ 342. Express and other transportation companies

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2244, 2559

A.L.R. Library

Construction and Application of Uniform Division of Income for Tax Purposes Act (UDITPA)—Availability of Relief from Standard Apportionment Formula and Other Issues, 81 A.L.R.6th 97

Construction and Application of Uniform Division of Income for Tax Purposes Act (UDITPA)—Apportionment of Business Income, 80 A.L.R.6th 325

Forms

Am. Jur. Legal Forms 2d § 238:13

Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 179, 189, 203, 210, 211, 215, 235, 236, 238

Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 179 to 189, 203, 210, 211, 215, 235, 236, 238

Am. Jur. Pleading and Practice Forms, State and Local Taxation § 269 (Complaint, petition, or declaration—To recover tax against interurban carrier on revenue derived from intracity deliveries)

Am. Jur. Pleading and Practice Forms, State and Local Taxation § 271 (Answer—Defense—Entire transportation of commodity taxed was intrastate—Tax not a burden on interstate commerce)

Law Reviews and Other Periodicals

Aikins, Common Control and the Delineation of the Taxable Entity, 121 Yale L.J. 624 (2011)

Anderson, Tennessee Department of Revenue: Losing Battles But Winning Wars, 46-FEB Tenn. B.J. 24 (2010)

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Brown, An Equity—Based, Multilateral Approach for Sourcing Income Among Nations, 11 Fla. Tax Rev. 565 (2011)

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Simons, Fair Representation in the South Carolina Corporate Income Tax: Combined Reporting as Equitable Apportionment After Media General Communications v. South Carolina Department of Revenue, 62 S.C. L.Rev. 743 (2011)

Weldon, The Commonwealth Court of Pennsylvania's Influence on Corporate Tax, 21 Widener L.J. 229 (2011)

The principles applicable to the taxation of express companies are for the most part no different from those applicable to transportation companies generally; for example, the unit method of assessing and apportioning property taxes may properly be applied with respect to such concerns, subject, of course, to those limitations as to the administration of the unit system which are applicable to transportation companies generally.[1] Where an express company is a foreign corporation doing both an interstate and intrastate business, the general rules as to the validity, in the light of the Commerce Clause of the Federal Constitution, of state excise taxes imposed on foreign corporations[2] are applicable, the validity of particular tax statutes of this kind having been both sustained[3] and rejected.[4] A tax that is in fact a privilege tax cannot be applied to an exclusively interstate business.[5]

Footnotes

1 A. B. Frank Co. v. Latham, 190 S.W.2d 739 (Tex. Civ. App. Austin 1945), judgment aff'd, 145 Tex. 30, 193 S.W.2d 671 (1946).
As to the unit rule or method, generally, see, § 313.

2 §§ 193 to 200.

3 Railway Exp. Agency, Inc. v. Com. of Va., 358 U.S. 434, 79 S. Ct. 411, 3 L. Ed. 2d 450 (1959).

4 State v. Northern Pac. Exp. Co., 27 Mont. 419, 71 P. 404 (1903).

5 Railway Exp. Agency v. Com. of Va., 347 U.S. 359, 74 S. Ct. 558, 98 L. Ed. 757 (1954).

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E. Miscellaneous Companies

§ 343. Pipeline companies

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West's Key Number Digest, Commerce 62.2
West's Key Number Digest, Taxation 2248, 2250

A.L.R. Library

Construction and Application of Uniform Division of Income for Tax Purposes Act (UDITPA)—Availability of Relief from Standard Apportionment Formula and Other Issues, 81 A.L.R.6th 97

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Laskin, Only a Name? Trademark Royalties, Nexus, and Taxing That Which Enriches, 22 Akron Tax J. 1 (2007)
Mason, Common Markets, Common Tax Problems, 8 Fla. Tax Rev. 599 (2007)
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Simons, Fair Representation in the South Carolina Corporate Income Tax: Combined Reporting as Equitable Apportionment After Media General Communications v. South Carolina Department of Revenue, 62 S.C. L.Rev. 743 (2011)
Weldon, The Commonwealth Court of Pennsylvania's Influence on Corporate Tax, 21 Widener L.J. 229 (2011)

A foreign pipeline company engaged exclusively in interstate commerce within a state is not subject to excise or franchise taxation within such state.[1] The principle that excise taxation of a foreign corporation engaged in both interstate and intrastate business in the taxing state is not invalid if limited to the intrastate business done by the taxpayer[2] has been applied in several cases upholding the imposition of such exactions as against foreign pipeline corporations.[3]

With respect to state taxation of natural gas, or taxes based upon its production, transportation, or distribution, a State may impose a tax upon the value at the wells of natural gas produced within its limits although the gas is transported into other states for consumption.[4] As to taxation by a State into which the gas is conveyed, the general rule is that gas sold and delivered by the importing company to a local distributing company, or to consumers directly, or through the agency of a local distributing company, in a continuous flow, and without any change in the pressure or other processing, is not subject to the taxing power of the State. However, gas which, before delivery to such distributing company or consumer, is subjected to processing, such as the reduction of its original pressure, is subject to such power of the State,[5] and imported gas which has been delivered to the mains of a local distributing company, and by it distributed to its local consumers through many small lines, under reduced pressure, ceases to be in interstate commerce and is therefore subject to the taxing or ratemaking power of the State.[6]

Footnotes

1 State Tax Commission of Mississippi v. Interstate Natural Gas Co., 284 U.S. 41, 52 S. Ct. 62, 76 L. Ed. 156 (1931); Ozark Pipe Line Corporation v. Monier, 266 U.S. 555, 45 S. Ct. 184, 69 L. Ed. 439 (1925).

2 § 200.

3 Memphis Natural Gas Co. v. Beeler, 315 U.S. 649, 62 S. Ct. 857, 86 L. Ed. 1090 (1942); Coverdale v. Arkansas-Louisiana Pipe Line Co., 303 U.S. 604, 58 S. Ct. 736, 82 L. Ed. 1043 (1938); Southern Natural Gas Corporation v. State of Alabama, 301 U.S. 148, 57 S. Ct. 696, 81 L. Ed. 970 (1937).

4 Hope Natural Gas Co. v. Hall, 274 U.S. 284, 47 S. Ct. 639, 71 L. Ed. 1049 (1927) (disapproved of on other grounds by, Commonwealth Edison Co. v. Montana, 453 U.S. 609, 101 S. Ct. 2946, 69 L. Ed. 2d 884 (1981)).

5 East Ohio Gas Co. v. Tax Commission of Ohio, 283 U.S. 465, 51 S. Ct. 499, 75 L. Ed. 1171 (1931).

6 East Ohio Gas Co. v. Tax Commission of Ohio, 283 U.S. 465, 51 S. Ct. 499, 75 L. Ed. 1171 (1931).

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Part Five. Taxation of Particular Business Enterprises

XVII. Insurance Companies, Banks, and Other Financial Institutions

A. Insurance Companies

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Research References

West's Key Number Digest

West's Key Number Digest, Taxation 2243, 2326, 2558

A.L.R. Library

A.L.R. Index, Excise Taxes
A.L.R. Index, Profits or Income
A.L.R. Index, Taxes
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Part Five. Taxation of Particular Business Enterprises

XVII. Insurance Companies, Banks, and Other Financial Institutions

A. Insurance Companies

1. In General

§ 344. Generally

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West's Key Number Digest

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The states, acting within constitutional limitations, may impose taxes with respect to insurers of lives and property and the insurance business generally.[1] The admitted power of the State to prohibit foreign insurance companies from transacting business within its boundaries without compliance with stipulated requirements[2] includes, for example, the power to impose license fees and taxes as conditions to the admission of such concerns to do business in the state.[3] The State may impose license fees and taxes upon insurance agents and brokers[4] or tax as property the franchise of a foreign insurance company.[5]

Footnotes

1 Northwestern Mut. Life Ins. Co. v. Lewis & Clarke County, 28 Mont. 484, 72 P. 982 (1903).

2 Am. Jur. 2d, Insurance §§ 49 to 65.

3 Palmetto Fire Ins. Co. v. Conn, 272 U.S. 295, 47 S. Ct. 88, 71 L. Ed. 243 (1926); Equitable Life Assur Soc of U.S. v. Pennsylvania, 238 U.S. 143, 35 S. Ct. 829, 59 L. Ed. 1239 (1915); Fireman's Fund Ins. Co. v. Commissioner of Corporations and Taxation, 325 Mass. 386, 90 N.E.2d 668 (1950).

4 Herbring v. Lee, 126 Or. 588, 269 P. 236, 60 A.L.R. 1165 (1928), aff'd, 280 U.S. 111, 50 S. Ct. 49, 74 L. Ed. 217, 64 A.L.R. 1430 (1929).

5 Northwestern Mut. Life Ins. Co. v. Lewis & Clarke County, 28 Mont. 484, 72 P. 982 (1903).

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Part Five. Taxation of Particular Business Enterprises

XVII. Insurance Companies, Banks, and Other Financial Institutions

A. Insurance Companies

1. In General

§ 345. Extraterritoriality; situs

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2243, 2326, 2558

While a State may not impose a tax upon the business done by a foreign insurer where the circumstances indicate that because of its previous withdrawal from the state or for other reasons, such insurer did no business within the state during the tax years in question,[1] this principle does not prevent a State from imposing a tax upon business done by such a concern within its borders for certain designated years and measuring it according to the amount of premiums received in connection with such business both during and after the years that the taxpayer was actually doing business in the state.[2] Neither does it prevent the imposition of a tax on foreign insurers admittedly doing business in the state although the amount of the imposition is computed, in part, with respect to premiums paid to the taxpayer outside the state by residents thereof.[3] Although a tax may be imposed upon a foreign insurer licensed to do business within the taxing jurisdiction with respect to premiums received from policies insuring persons or property within the state, notwithstanding that the policies were made outside the state,[4] an annual tax based upon gross premiums received from business within the state may not constitutionally be applied against a foreign insurer authorized to do business in the state with respect to premiums received in another state on reinsurance contracts effected in such other state, and payable therein, with other insurance companies insuring the latter against loss on life policies issued by them in the taxing state to residents thereof.[5]

Footnotes

1 Continental Assur. Co. v. Tennessee, 311 U.S. 5, 61 S. Ct. 1, 85 L. Ed. 5 (1940); Connecticut General Life Ins. Co. v. Johnson, 303 U.S. 77, 58 S. Ct. 436, 82 L. Ed. 673 (1938).

2 Continental Assur. Co. v. Tennessee, 311 U.S. 5, 61 S. Ct. 1, 85 L. Ed. 5 (1940).

3 Equitable Life Assur Soc of U.S. v. Pennsylvania, 238 U.S. 143, 35 S. Ct. 829, 59 L. Ed. 1239 (1915).

4 Compania General de Tabacos de Filipinas v. Collector of Internal Revenue, 275 U.S. 87, 48 S. Ct. 100, 72 L. Ed. 177 (1927).

5 Connecticut General Life Ins. Co. v. Johnson, 303 U.S. 77, 58 S. Ct. 436, 82 L. Ed. 673 (1938).

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1. In General

§ 346. Property taxation of intangibles

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2243, 2326, 2558

The underlying principle with respect to the situs for taxation of intangible personal property, namely, that property of this character may be taxed by the State of the owner's domicil,[1] is applicable to sustain taxation by the state of an insurer's incorporation of sums due as insurance premiums even though owing from policyholders outside the state.[2] In various ways, the general principle that intangible property may constitutionally be subjected to taxation in a state other than that of the owner's domicil when it is used in the conduct of a business in such other state[3] has been applied in connection with the taxation of the insurance business. Thus, sums due a foreign insurance company for premiums owed by policyholders within a state,[4] and credits representing loans made to policyholders in the regular course of business in a state by the local agent of a foreign insurance company,[5] are taxable in such states. This applies even if such indebtedness is not represented by written instruments[6] or, if so represented, even if the written instruments are kept at the home office of the insurer at all times when not needed in the taxing state.[7]

Footnotes

1 § 565.

2 State ex rel. American Cent. Ins. Co. v. Gehner, 320 Mo. 901, 9 S.W.2d 621, 59 A.L.R. 1041 (1928).

3 §§ 570 to 576.

4 Orient Ins. Co. v. Board of Assessors for Parish of Orleans, 221 U.S. 358, 31 S. Ct. 554, 55 L. Ed. 769 (1911); Liverpool & London & Globe Ins. Co. of New York v. Board of Assessors for Parish of Orleans, 221 U.S. 346, 31 S. Ct. 550, 55 L. Ed. 762 (1911).

5 Metropolitan Life Ins. Co. v. City of New Orleans, 205 U.S. 395, 27 S. Ct. 499, 51 L. Ed. 853 (1907); Travelers' Ins. Co. v. Board of Assessors, 122 La. 129, 47 So. 439 (1908).

6 Liverpool & London & Globe Ins. Co. of New York v. Board of Assessors for Parish of Orleans, 221 U.S. 346, 31 S. Ct. 550, 55 L. Ed. 762 (1911).

7 Metropolitan Life Ins. Co. v. City of New Orleans, 205 U.S. 395, 27 S. Ct. 499, 51 L. Ed. 853 (1907); Travelers' Ins. Co. v. Board of Assessors, 122 La. 129, 47 So. 439 (1908).

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1. In General

§ 347. Taxes on premiums

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West's Key Number Digest

West's Key Number Digest, Taxation 2243, 2326, 2558

Forms

Am. Jur. Pleading and Practice Forms, State and Local Taxation § 245 (Complaint, petition, or declaration—By state—Against insurance corporation—For recovery of unpaid franchise taxes under deficiency assessment)

Am. Jur. Pleading and Practice Forms, State and Local Taxation § 267 (Complaint, petition, or declaration—To recover amount of excessive exaction of insurance premium tax)

Am. Jur. Pleading and Practice Forms, State and Local Taxation § 270 (Complaint, petition, or declaration—To compel refund of erroneous exaction of insurance premium tax from mutual assessment association)

Am. Jur. Pleading and Practice Forms, State and Local Taxation § 277 (Petition or application—To court—For review of administrative board's action denying revision of assessment on premiums of insurance company)

Taxes imposed on concerns doing an insurance business are frequently based upon or measured by the amount of the premiums received by the taxpayer. Such impositions are regarded as license or franchise, rather than property, taxes.[1] The scope to be given the term "premiums" as used in this connection depends upon the interpretation to be given the terminology of the particular statute involved in the light of the circumstances of particular cases and the provisions of other laws which must be construed with it. Neither assessments levied by a company selling insurance on the mutual plan[2] nor the consideration paid

for an annuity contract[3] may be considered as constituting "premiums" within the meaning of such enactments. With respect to the latter type of insurance receipts, there is a difference of judicial opinion on the question, some cases taking the position that such payments constitute premiums within the meaning of tax statutes[4] and others that they do not.[5]

Definitions:

"Gross premiums" and "gross direct premiums" subject to taxation have been held to include premiums retained by an insurer's agents and never remitted to the insurer.[6] A tax only on the portion of the premium actually used for the indemnification of risk without including any additional expenses or payments to agents would apply to "net premiums" rather than "gross premiums."[7]

A tax on "direct premiums received" is imposed upon the consideration paid by an insured to an insurer for a contract of insurance.[8]

Footnotes

1 Grange Mut. Life Co. v. State Tax Commission, 76 Idaho 303, 283 P.2d 187 (1955); Northwestern Mut. Life Ins. Co. v. Murphy, 223 Iowa 333, 271 N.W. 899, 109 A.L.R. 1054 (1937); Equitable Life Assur. Soc. of U.S. v. Thulemeyer, 49 Wyo. 63, 52 P.2d 1223 (1935).

2 Barber v. Hartford Life Ins. Co., 279 Mo. 316, 214 S.W. 207, 12 A.L.R. 758 (1919), aff'd, 255 U.S. 129, 41 S. Ct. 276, 65 L. Ed. 549 (1921).

3 People ex rel. Metropolitan Life Ins. Co. v. Knapp, 193 A.D. 413, 184 N.Y.S. 345 (3d Dep't 1920), aff'd, 231 N.Y. 630, 132 N.E. 916 (1921); Hunt v. Equitable Life Assur. Soc. of U.S., 1964 OK 253, 399 P.2d 487 (Okla. 1964).

4 Northwestern Mut. Life Ins. Co. v. Murphy, 223 Iowa 333, 271 N.W. 899, 109 A.L.R. 1054 (1937); Equitable Life Assur. Soc. of U.S. v. Hobbs, 154 Kan. 1, 114 P.2d 871, 135 A.L.R. 1234 (1941).

5 State v. Equitable Life Assur. Soc. of U.S., 68 N.D. 641, 282 N.W. 411 (1938).

6 Stewart Title Guar. Co. v. State Tax Assessor, 2009 ME 8, 963 A.2d 169 (Me. 2009); Stewart Title Guar. Co. v. Commissioner of Revenue, 757 N.W.2d 874 (Minn. 2008).

7 Stewart Title Guar. Co. v. Commissioner of Revenue, 757 N.W.2d 874 (Minn. 2008).

8 American Nat. Life Ins. Co. of Texas v. Director of Revenue, 269 S.W.3d 19 (Mo. 2008).

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A. Insurance Companies

2. Construction and Application of Statutes

§ 348. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2243, 2326, 2558

The question whether a particular organization is to be regarded as coming within the purview of tax statutes relating to insurance companies or organizations depends mainly upon the character of the business done in the taxable years in question.[1] The right to tax an organization under statutes relating to the taxation of those engaged in the insurance business does not depend upon the name by which the organization is called or upon the fact that it is empowered to engage in such a business.[2]

Footnotes

1 Bowers v. Lawyers' Mortg. Co., 285 U.S. 182, 52 S. Ct. 350, 76 L. Ed. 690 (1932); National Commercial Title & Mortgage Guaranty Co. v. Duffy, 132 F.2d 86, 146 A.L.R. 448 (C.C.A. 3d Cir. 1942).

2 Bowers v. Lawyers' Mortg. Co., 285 U.S. 182, 52 S. Ct. 350, 76 L. Ed. 690 (1932); National Commercial Title & Mortgage Guaranty Co. v. Duffy, 132 F.2d 86, 146 A.L.R. 448 (C.C.A. 3d Cir. 1942).

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XVII. Insurance Companies, Banks, and Other Financial Institutions

A. Insurance Companies

2. Construction and Application of Statutes

§ 349. What is an "insurance company"

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2243, 2326, 2558

Statutes taxing "insurance companies" have been held applicable to mutual companies,[1] to guaranty or surety companies,[2] to a nonprofit hospital service association, to an insurance association created by acts of the legislature as an integral part of the workers' compensation law, and to both fire and life insurance organizations where a question is raised as to the applicability of the enactment to both kinds of concerns.[3] On the other hand, under the statutory phraseology and facts and circumstances shown in particular cases, a statute taxing "insurance companies" may not be applied to a reciprocal insurance exchange, to companies dealing in industrial group insurance, to mutual companies, or to a corporation engaged in the business of servicing mortgages, investing in and buying and selling bonds and mortgages, and originating and selling mortgage loans.[4]

Footnotes

1 Northwestern Mut. Life Ins. Co. v. Lewis & Clarke County, 28 Mont. 484, 72 P. 982 (1903).

2 American Sur. Co. of New York v. Folk, 124 Tenn. 139, 135 S.W. 778 (1911).

3 Bankers' Life Co. v. Richardson, 192 Cal. 113, 218 P. 586 (1923) (life insurance); Cleveland Hospital Service Ass'n v. Ebright, 36 Ohio L. Abs. 600, 45 N.E.2d 157 (Ct. App. 2d Dist. Franklin County 1942), judgment aff'd, 142 Ohio St. 51, 26 Ohio Op. 250, 49 N.E.2d 929 (1943) (nonprofit hospital association); Texas Employers' Ins. Ass'n v. City of Dallas, 5 S.W.2d 614 (Tex. Civ. App. Dallas 1928), writ refused, (Nov. 28, 1928).

4 Idaho Mut. Co-op. Ins. Co. v. Myer, 10 Idaho 294, 77 P. 628 (1904) (mutual company); Mortgage Corp. of New York v. Graves, 262 A.D. 421, 29 N.Y.S.2d 80 (3d Dep't 1941) (selling mortgages).

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2. Construction and Application of Statutes

§ 350. Taxable funds

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2243, 2326, 2558

Whether or not a particular tax statute will be construed as subjecting insurance reserves to taxation depends upon the proper construction of the language employed by the legislature. Many statutes, exhibiting some variations in phraseology, have been interpreted as permitting such taxation.[1] Thus, enactments have been so regarded which provided for the taxation of the moneyed capital, surplus, and undivided profits of corporations;[2] subjected to taxation all moneyed or stock corporations upon their capital; taxed the capital and accumulated surplus of insurance companies; or taxed moneyed corporations upon the value of their gross assets.[3]

Whether or not the reserve funds of an insurance company may be deducted from the gross amount or valuation of its property in determining the amount of its tax assessment depends upon the provisions of the applicable statutes. In some instances, such enactments expressly provide that the reserves of an insurance company are to be deducted in determining the value of its assets for tax purposes.[4] In other instances, a statute specifically provides that the assessor must deduct the debts or liabilities of the taxpayer, and the status of the reserve funds of the company as such a debt or liability is expressly delineated.[5] The question usually reduces itself to a consideration of the true intent and meaning of the portion of the statute dealing expressly with reserves and reserve funds.[6]

Footnotes

1 In re Oklahoma Nat. Life Ins. Co., 1918 OK 113, 68 Okla. 219, 173 P. 376, 13 A.L.R. 174 (1918).

2 In re Oklahoma Nat. Life Ins. Co., 1918 OK 113, 68 Okla. 219, 173 P. 376, 13 A.L.R. 174 (1918).

3 Inhabitants of City of Trenton v. Standard Fire Ins. Co. of New Jersey, 77 N.J.L. 757, 73 A. 606 (N.J. Ct. Err. & App. 1909); People ex rel. National Surety Co. v. Feitner, 166 N.Y. 129, 59 N.E. 731 (1901).

4 State ex rel. American Automobile Ins. Co. v. Gehner, 320 Mo. 702, 8 S.W.2d 1057, 59 A.L.R. 1026 (1928).

5 Central Life Assur. Soc. v. City of Des Moines, 212 Iowa 1254, 238 N.W. 535, 78 A.L.R. 551 (1931).

6 Central Life Assur. Soc. v. City of Des Moines, 212 Iowa 1254, 238 N.W. 535, 78 A.L.R. 551 (1931); Mayor and Common Council of City of Newark v. Lewis, 82 N.J.L. 279, 81 A. 1072 (N.J. Sup. Ct. 1911), aff'd, 83 N.J.L. 802, 86 A. 1102 (N.J. Ct. Err. & App. 1913).

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B. Banking and Finance

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Research References

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West's Key Number Digest, Taxation 2242, 2556, 2557

A.L.R. Library

A.L.R. Index, Excise Taxes
A.L.R. Index, Profits or Income
A.L.R. Index, Taxes
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B. Banking and Finance

§ 351. Banks

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2242, 2556, 2557

A State has power to tax the franchises of banking corporations organized under its laws;[1] thus, many of the principles relating generally to the validity of franchise taxes on domestic corporations[2] have been applied to the taxation of domestic banking corporations.[3] Additionally, principles relating to the deduction of tax-exempt securities in the taxation of corporations generally[4] have been applied to the taxation of incorporated banks.[5] Under some circumstances, the federal statutes relating to state taxation of national banks may have a bearing upon the proper construction of statutes involving the taxation of state banks.[6]

Banks operating in a state may be subjected to a bank shares tax, which may be designed to fall upon the bank's shareholders or may be designed to be levied against the financial institution rather than its shareholders.[7]

Where a newly formed banking corporation acquires all the capital assets of another banking corporation by merger, the surviving banking association is liable for the financial institution excise tax for the succeeding year even though it does no business during the year of reorganization, and the tax will be measured by the net income of the acquired banking association during the year of reorganization.[8]

Although a bank tax is in lieu of an ad valorem tax, its administration is assigned to an assessing division of the state government, and the tax is payable to county and municipal governments; nevertheless, such a tax is a corporate excise tax and must be so regarded and administered.[9]

Caution:

A federal bank is not entitled to take a deduction from its franchise taxes for income derived from de facto branches in other states when, under federal regulations, the United States Office of Thrift Supervision (OTS) must approve the establishment of branches and subsidiaries, and during the years in question, the bank had no OTS-approved branches or subsidiaries.[10]

Footnotes

1 Bank of Cal. v. City and County of San Francisco, 142 Cal. 276, 75 P. 832 (1904); Indiana Dept. of State Revenue v. Fort Wayne Nat. Corp., 649 N.E.2d 109 (Ind. 1995); Granite Nat. Bank v. State Tax Commission, 30 Utah 2d 351, 517 P.2d 1310 (1974).

2 §§ 178 to 185.

3 Bank of Cal. v. City and County of San Francisco, 142 Cal. 276, 75 P. 832 (1904); Lehman Bros. Bank, FSB v. State Bank Com'r, 937 A.2d 95 (Del. 2007), as modified, (Nov. 9, 2007) (interpreting the meaning of the terms "principal office" and "headquarters").

4 §§ 173, 174.

5 Farmers' & Mechanics' Sav. Bank of Minneapolis v. State of Minnesota, 232 U.S. 516, 34 S. Ct. 354, 58 L. Ed. 706 (1914); Home Sav. Bank v. City of Des Moines, 205 U.S. 503, 27 S. Ct. 571, 51 L. Ed. 901 (1907).

6 § 156.

7 Allfirst Bank v. Com., 593 Pa. 631, 933 A.2d 75 (2007).

8 Birmingham Trust Nat. Bank v. State, 292 Ala. 335, 294 So. 2d 153 (1974).

9 Commerce Union Bank of Chattanooga v. State Bd. of Equalization, 615 S.W.2d 151 (Tenn. 1981).

10 Lehman Bros. Bank, FSB v. State Bank Com'r, 937 A.2d 95 (Del. 2007), as modified, (Nov. 9, 2007).

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XVII. Insurance Companies, Banks, and Other Financial Institutions

B. Banking and Finance

§ 352. Building and loan associations

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2242, 2556, 2557

Although building and loan associations are recognized as differing in many respects from ordinary private corporations and as being, in fact, sui generis in the corporate family,[1] they are, in the absence of a constitutional or valid statutory provision exempting them, subject to taxation and in that respect are governed by the same principles as govern corporations generally.[2] In determining the "net" income of savings and loan associations for the purpose of computing a tax levied on institutions of that kind measured by net income, a deduction for payments made to their members for the use of money on deposit with the association is proper.[3]

No state, county, municipal, or local taxing authority may impose any tax on a federal savings association or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions.[4] A State's imposition on a federal savings and loan association of a state excise tax measured by the net operating income of the banking institution is not violative of the Commerce Clause of the Federal Constitution as creating a risk of multiple taxation where the claim that some neighboring state might at some future time attempt to tax the income from loans secured by property in that state is wholly speculative and unsupported by evidence in the record.[5]

Footnotes

1 Am. Jur. 2d, Banks and Financial Institutions §§ 186 to 190.

2 State v. Tuscaloosa Building & Loan Ass'n, 230 Ala. 476, 161 So. 530, 99 A.L.R. 1019 (1935).

3 Aberdeen Sav. & Loan Ass'n v. Chase, 157 Wash. 351, 289 P. 536 (1930).

4 12 U.S.C.A. § 1464(h).

5 First Federal Sav. and Loan Ass'n of Boston v. State Tax Commission, 437 U.S. 255, 98 S. Ct. 2333, 57 L. Ed. 2d 187 (1978).

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XVIII. Public Utilities and Services

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Research References

West's Key Number Digest

West's Key Number Digest, Taxation 2247, 2248, 2250

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Forms

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XVIII. Public Utilities and Services

§ 353. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2247, 2248, 2250

Certain of the principles relating to the validity of state taxation of domestic or foreign corporations generally have been applied with respect to corporate public utility companies; for example, the general rule that excise taxes upon domestic corporations are not invalid under the Commerce Clause of the Federal Constitution even though the business carried on by the taxpayer is one which involves in some way commercial intercourse between states[1] has been applied with respect to an excise tax imposed on corporations engaged in supplying natural gas to consumers within the state, which was based on gross receipts from the sale of gas piped from other states.[2] A tax on public utilities measured by gross income, which subjects to the tax a transportation company bound by an agreement with a municipality, which cannot be changed without approval of the majority of the electors, to furnish transportation for a given fare, does not constitute a deprivation of due process as being measured without regard to the net income of or ruinous effect on the taxpayers and as laying on a particular class a burden which should be borne by all.[3]

Statutes imposing taxes on the special franchises granted public service corporations with respect to the use of the public streets or highways are usually regarded as not invalid as contravening the Contract Clause of the Federal Constitution.[4]

Footnotes

1 § 178.

2 East Ohio Gas Co. v. Tax Commission of Ohio, 283 U.S. 465, 51 S. Ct. 499, 75 L. Ed. 1171 (1931).

3 New York Rapid Transit Corporation v. City of New York, 303 U.S. 573, 58 S. Ct. 721, 82 L. Ed. 1024 (1938).

4 People of State of New York ex rel. Metropolitan Street Ry. Co. v. State Board of Tax Com'rs, 199 U.S. 1, 25 S. Ct. 705, 50 L. Ed. 65 (1905).

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Part Five. Taxation of Particular Business Enterprises

XVIII. Public Utilities and Services

§ 354. Property and rights subject to taxation

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2247, 2248, 2250

Certain particular forms of tangible property peculiar to the business of public service corporations enjoying a franchise to use the public streets or highways are, without considering the precise manner in which they are to be assessed or valued for tax purposes, subject to taxation under a proper interpretation of the applicable statutes whether the latter contain, on the one hand, express provisions for the taxation of such forms of property or, on the other hand, broad requirements that all property not exempt be taxed. This conclusion has been reached with respect to, among possible others, the following kinds of tangibles—

— mains and pipes;[1]

— conduits;[2]

— bridges;[3] and

— trestles.[4]

With respect to the taxability of the intangible property of public service corporations, special franchises granted such concerns with respect to the use of the public streets, highways, or navigable waters are taxable under the provisions of applicable statutes[5] and are sometimes taxable as easements.[6]

In some jurisdictions, property controlled by a people's utility district is subject to property tax,[7] and ad valorem taxes may be imposed on a taxpayer based on contract rights to a municipally owned electricity cogeneration facility.[8]

Footnotes

1 Consolidated Gas Co. of Baltimore City v. City of Baltimore, 105 Md. 43, 65 A. 628 (1907).
As to the taxation of pipeline companies, see § 343.

2 Consolidated Gas Co. of Baltimore v. City of Baltimore, 101 Md. 541, 61 A. 532 (1905).

3 People ex rel. New York Cent. R. Co. v. State Tax Commission, 239 N.Y. 183, 146 N.E. 197, 36 A.L.R. 1520 (1924).

4 People ex rel. Harlem River & P.C.R. Co. v. State Board of Tax Com'rs, 215 N.Y. 507, 109 N.E. 569 (1915).

5 Detroit Citizens' St. R. Co. v. Common Council of City of Detroit, 125 Mich. 673, 85 N.W. 96 (1901); People ex rel. New York Cent. R. Co. v. State Tax Commission, 239 N.Y. 183, 146 N.E. 197, 36 A.L.R. 1520 (1924).

6 Stockton Gas & Elec. Co. v. San Joaquin County, 148 Cal. 313, 83 P. 54 (1905); Detroit Citizens' St. R. Co. v. Common Council of City of Detroit, 125 Mich. 673, 85 N.W. 96 (1901).

7 Western Generation Agency v. Department of Revenue, State of Or., 327 Or. 327, 959 P.2d 80 (1998).

8 Pacificorp Power Marketing, Inc. v. Department of Revenue, 340 Or. 204, 131 P.3d 725 (2006).

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XVIII. Public Utilities and Services

§ 355. Determination of kind of property as real or personal

Topic Summary | Correlation Table | References

West's Key Number Digest

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In various connections, it becomes important to determine whether particular kinds of property of public service corporations are to be regarded as realty or as personalty for purposes of taxation. The question is, of course, one within the discretion of the legislature, and if the legislative intention is deducible from the controlling statutes, it must be respected.[1] Thus, in numerous instances, the problem resolves itself into a determination of whether or not the particular kind of property under consideration may be regarded as "land," "real estate," "lots," etc. within the meaning of applicable statutes.[2] Where the applicable statutes contain no clear indication of the intention of the legislature with respect to the question under consideration, many courts fall back upon general principles relating to the law of fixtures,[3] making the question whether a particular form of property owned by a public utility is to be regarded as real estate for tax purposes depend upon whether or not it may be regarded as a fixture.[4]

Footnotes

1 City of Portland v. New England Tel. & Tel. Co., 103 Me. 240, 68 A. 1040 (1907).

2 Rudolph v. Potomac Elec. Power Co., 24 F.2d 882, 57 A.L.R. 865 (App. D.C. 1928); Southwestern Public Service Co. v. Chaves County, 85 N.M. 313, 512 P.2d 73 (1973).

3 Am. Jur. 2d, Fixtures §§ 1 et seq.

4 Southwestern Public Service Co. v. Chaves County, 85 N.M. 313, 512 P.2d 73 (1973).

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Part Five. Taxation of Particular Business Enterprises

XVIII. Public Utilities and Services

§ 356. Assessment and valuation

Topic Summary | Correlation Table | References

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Forms

Am. Jur. Pleading and Practice Forms, State and Local Taxation § 195 (Petition or application—For review of municipal tax board determination—Municipal income tax on public utility preempted by state gross-receipts tax)

Am. Jur. Pleading and Practice Forms, State and Local Taxation § 261 (Complaint, petition, or declaration—To enjoin foreign state from collecting excise tax levied on stock and franchise of interstate public service corporation)

It has been recognized, either by statute or judicial decision—

— that the valuation of many of the special franchises enjoyed by public service corporations is more appropriately entrusted to state, rather than local, officials;[1]

— that the capitalization-of-income or "net earnings" method[2] is, under certain circumstances at least, proper in assessing the value of such franchises;[3]

— that in the application of the so-called "stock-and-bond method" of valuing a corporation's property[4] to the determination of the value of the street franchises of a public utility, the amount of the bonded indebtedness may not be included in the gross assessment, where there are statutory provisions that bonds are to be taxed to the owners rather than to the bond debtors;[5] and

— that the so-called "unit method" of assessment, or something closely analogous thereto,[6] may appropriately be employed in valuing the property of public service corporations.[7]

Where public utilities own expensive pieces of real estate in one area but service large portions or entire regions of a state, the legislature may enact a tax that spreads the equivalent of the real estate tax receipts from all utilities proportionately among all local taxing authorities. However, electric cooperative corporations that provide electric energy only to their members are not subject to the tax as they do not "furnish public utility service" under the terms of the law.[8]

Footnotes

1 People ex rel. Metropolitan St. R. Co. v. State Board of Tax Com'rs, 174 N.Y. 417, 67 N.E. 69 (1903), aff'd, 199 U.S. 1, 25 S. Ct. 705, 50 L. Ed. 65 (1905).

2 § 188.

3 People ex rel. Central Hudson Gas & Electric Co. v. State Tax Commission, 247 N.Y. 281, 160 N.E. 371, 57 A.L.R. 374 (1928).

4 § 188.

5 Consolidated Gas Co. of Baltimore v. City of Baltimore, 101 Md. 541, 61 A. 532 (1905).

6 As to the unitary method with regard to transportation and communication facilities, see §§ 313, 314.

7 Detroit Citizens' St. R. Co. v. Common Council of City of Detroit, 125 Mich. 673, 85 N.W. 96 (1901).

8 Adams Elec. Co-op., Inc. v. Com., 853 A.2d 1162 (Pa. Commw. Ct. 2004), subsequently aff'd, 585 Pa. 3, 887 A.2d 1213 (2005).

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XVIII. Public Utilities and Services

§ 357. Interdependence of tangibles and franchises

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West's Key Number Digest

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It is frequently recognized, either by express statutory language or in judicial opinions, that the tangible property of public service corporations located in, over, under, or near public streets or highways and used in connection with the exercise of a street franchise is of little or no value apart from the ownership and exercise of the franchise itself and that this circumstance should be taken into consideration in the valuation for tax purposes of both the tangible property and the intangible rights or privileges.[1] Thus, statutes sometimes provide that certain roughly defined rights relating to the public streets or highways shall be termed special franchises and be deemed to include, for tax purposes, the value of tangible property of the franchise holder situated in or near the streets or highways involved.[2] Such statutes have been construed to mean that tangibles necessary and essential to the operation of the utility controlling the franchise and located in or near streets or highways are to be taxed as part of the franchise but that tangibles not so necessary or essential but which are merely for the benefit or safety of the public cannot be so taxed.[3]

Footnotes

1 Consolidated Gas Co. of Baltimore v. City of Baltimore, 101 Md. 541, 61 A. 532 (1905); Detroit Citizens' St. R. Co. v. Common Council of City of Detroit, 125 Mich. 673, 85 N.W. 96 (1901); People ex rel. Central Hudson Gas & Electric Co. v. State Tax Commission, 247 N.Y. 281, 160 N.E. 371, 57 A.L.R. 374 (1928).

2 People ex rel. Edison Electric Illuminating Co. v. Commissioners of Taxes and Assessments, 58 Misc. 249, 110 N.Y.S. 833 (Sup 1908).

3 People ex rel. New York, O. & W. Ry. Co. v. State Board of Tax Com'rs, 215 N.Y. 434, 109 N.E. 547 (1915).

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